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by

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**Teaching Texas: Race, Disability, and the History of the School-to-  
Prison Pipeline**

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**Teaching Texas: Race, Disability, and the History of the School-to-  
Prison Pipeline**

**by**

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## **Dedication**

Vern Laux, 1955-2016

To my dad, Vern Laux, for his unconditional love and support and his endless pride in my work. His passion for the world, but particularly for birds, came across in his life and his engaging writings. Reading his work helped me find my voice at the end of this project. I love and miss you dad.



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# **Teaching Texas: Race, Disability, and the History of the School-to-Prison Pipeline**

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The University of Texas at Austin, 2016

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This dissertation presents a genealogical excavation of the contemporary school-to-prison pipeline, arguing that today's pipeline has deep roots in America's historic inequities. The phrase "school-to-prison pipeline" refers to practices that criminalize rather than educate particular students: high-stakes testing, zero-tolerance disciplinary policies, and police presence in schools. The pipeline disproportionately impacts students of color and students with disabilities. Furthermore, students of color are disproportionately labeled disabled, positioning students of color as doubly vulnerable to discretionary discipline. This dissertation calls for further attention to this intersection between race, disability, and punishment—and between critical disability studies and critical race studies—by examining the extent to which disability constitutes a racial project. This project employs the concept of debility to describe how populations may be marked as subject to injury or vulnerable to violence and argues for differentiating disability from debility in order to illuminate the extent to which disability constitutes a racial project.

Both race and ability categories hinge on notions of fitness for and assimilability towards citizenship and both require constant renegotiation and reinforcement to maintain

their salience. This dissertation focuses on Texas and begins by examining the solidification of education in the state, in conjunction with the eugenicist thought and scientific racism underlying both race and ability categories. The project further examines the diffuse set of responses that perpetuate the debilitation of non-white students in the face of challenges to racial and ability segregation. In particular the ongoing redefinition of special education categories that occurs concurrently with demise of legal racial segregation provides a mechanism for continuing the segregation of students of color. Schools' explicit and implicit punishment of students provides a key mechanism for reinforcing and perpetuating ongoing debilitation. Debilitated students are disproportionately punished, and at times the punishment itself is disabling. Finally, this dissertation argues that the historical double debilitation of students of color undergirds today's school-to-prison pipeline, which is made possible by the solidification of the contemporary prison industrial complex.

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## Chapter 1: Introduction: The School-to-Prison Pipeline

In 2002 fourteen-year-old Cedric Napoleon died at the hands of his special education teacher. His foster mother's testimony at a congressional hearing seven years later describes the vicious practices employed by his eighth grade teacher—all of which came to light only after his death. The victim of abuse and neglect as a child, including repeated starvation, Cedric would panic if denied food. Labeled “emotionally disturbed,” Cedric's diagnosis led to his placement in a special education class. Despite knowing this particular trigger, Cedric's teacher deliberately denied him lunch, causing his panic to escalate and thus giving the teacher an excuse to physically restrain him. The morning of his death, Cedric's teacher delayed his lunch as punishment for his having stopped working around 11 a.m. His foster mother elaborated on what happened next:

At 1pm Cedric got in more trouble when, still not having lunch, he was caught trying to steal candy. After 2:30, he still hadn't been allowed to eat his lunch, and got up to leave the classroom. After Cedric attempted to leave the classroom, he refused to sit back down in his chair so his teacher forced him into his chair and restrained him. She is roughly six feet tall and weighs over two hundred thirty pounds. Cedric was short—he was a little boy. Cedric struggled as he was being held in his chair, so the teacher put him in a face down, or in a prone restraint, and sat on him. He struggled and said repeatedly: “I can't breathe.” “If you can speak, you can breathe,” she snapped at him. Shortly after that, he stopped speaking and he stopped struggling. He stopped moving at all. The teacher continued to restrain him. Finally the teacher and aide put Cedric back in his chair. The aide wiped drool off his mouth and they sat him up. But he slumped over and slipped out of his chair. Precious minutes passed by before a nurse was called.<sup>1</sup>

Cedric's death was not accidental; Texas' records note that Dawn Marie Hamilton, who outweighed Cedric by more than a hundred pounds, used “excessive and unnecessary

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<sup>1</sup> “Is a License to Teach Also a License to Kill?,” *Examiner.com*, May 23, 2009, <http://www.examiner.com/article/is-a-license-to-teach-also-a-license-to-kill>.

force,” and declared the death a homicide.<sup>2</sup> Cedric’s foster mother Toni Price told CBS News correspondent Nancy Cordes that “the autopsy report said they had never seen anything like that except in a car crash, because she crushed his chest.”<sup>3</sup> Yet despite clearly knowing the identity of the murderer, no charges emerged; Price’s status as “only” a foster mother rendered her unable to press charges. At the time of Price’s congressional testimony in 2009, Hamilton remained in the classroom, teaching in North Carolina. She retained her license to teach students with disabilities.<sup>4</sup> Hamilton was never charged with a crime and did not receive any sort of punishment for killing Cedric. Given his identity as a young black special education student, Cedric’s death demonstrates an extreme conclusion to routine practices of punishment that undergird the contemporary school-to-prison pipeline.

## THE PROJECT AND THE PIPELINE

This phrase “school-to-prison pipeline” refers to a set of practices—including, but not limited to, police presence in schools, zero-tolerance disciplinary policies, and high-stakes testing—that criminalize rather than educate students.<sup>5</sup> The pipeline starkly and

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<sup>2</sup> “Loudoun Teacher Implicated in Cedric Napoleon’s Death - Disability News | PatriciaEBauer.com,” *Disability News | PatriciaEBauer.com*, accessed July 14, 2013, <http://www.patriciaebauer.com/2009/05/20/loudoun-teacher-implicated-16821/>.

<sup>3</sup> “Abuse in Schools Widespread, Report Finds,” *CBS News*, accessed July 14, 2013, [http://www.cbsnews.com/8301-500172\\_162-5024611.html](http://www.cbsnews.com/8301-500172_162-5024611.html).

<sup>4</sup> “Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers,” accessed February 19, 2016, <http://www.gao.gov/products/GAO-09-719T>.

<sup>5</sup> For an incomplete bibliography of books on the topic see *Deconstructing the School-to-Prison Pipeline* (San Francisco: Jossey-Bass, 2003); Sofia Bahena, ed., *Disrupting the School-to-Prison Pipeline* (Cambridge, Mass: Harvard Educational Review, 2012); Maisha T. Winn, *Girl Time: Literacy, Justice, and School-to-Prison Pipeline* (Teachers College Press, 2011); Catherine Y Kim, *The School-to-Prison Pipeline: Structuring Legal Reform* (New York: New York University, 2010); Debra M. Pane, *Transforming the School-to-Prison Pipeline: Lessons From the Classroom*, Educational Futures : Rethinking Theory and Practice v.61 (Rotterdam, The Netherlands: Sense Publishers, 2014).

disproportionately impacts students of color and students with disabilities.<sup>6</sup> Additionally, students of color are more likely to be diagnosed and labeled as disabled and placed in special education settings. Moreover, within special education, students of color are even more likely to be assigned the most stigmatized and subjective special education categories, including Emotionally Disturbed (ED) and Mentally Retarded (MR). Students of color are doubly impacted.

One of the critical issues of this dissertation is the extent to which disability constitutes a racial project. While the field of disability studies foregrounds the social and cultural production of disability, eschewing a medical, bodily frame, the field unevenly grapples with race. At the 2015 American Studies Association Annual Meeting in Toronto, Jasbir Puar described the disciplinary relationship between critical race studies and critical disability studies as “awkward at best.”<sup>7</sup> Nirmala Ervelles echoes this sentiment in her essay “Race” in *Keywords for Disability Studies* noting, “The act of

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<sup>6</sup> There are several other identity categories that are disproportionately impacted by the school-to-prison pipeline that aren’t included here that need further research in a separate project, including sexual orientation/gender identity. Additionally, this project does not look at all racial groups. Native Americans belonging in the citizenry is similarly debilitated but receives minimal attention in this project. For a listing of different definitions drawn from the literature see page 548 of Russell J. Skiba, Mariella I. Arredondo, and Natasha T. Williams, “More Than a Metaphor: The Contribution of Exclusionary Discipline to a School-to-Prison Pipeline,” *Equity & Excellence in Education* 47, no. 4 (October 2, 2014): 546–64, doi:10.1080/10665684.2014.958965.

<sup>7</sup> Jasbir K Puar, “Caucus Critical Disability Studies: Building Intersectionality: American Studies Meets Critical Disability Studies” (American Studies Association Annual Meeting, Toronto, 2015); Jean Stefancic and Richard Delgado, *Critical Race Theory : The Cutting Edge* (Philadelphia: Temple University Press, 2013). Additionally, Critical Race Theory (CRT), credits legal scholars Derrick Bell and Alan Freeman’s development of the theory in the mid-1970s. CRT centers racism as a normal, structural part of American society. Another premise underlying CRT scholarship is that of interest convergence, which holds that white elites will only promote policies for black citizens when it also furthers their own self-interest. Finally, CRT emphasizes storytelling as a methodology. Despite its physical heft and intellectual breadth, *The Cutting Edge* does not examine the intersection of race and disability. The reader does include sections on Critical Race Feminism, Critical Race Praxis, Gay-Lesbian Queer Issues, Structural Determinism, and Crime, among others.

correlating race and disability is often fraught with violent and oppressive overtones.”<sup>8</sup> Within this context, Ervelles call for further engagement with the historical intersections of both categories.<sup>9</sup> Puar suggests a theoretical framework linking the two categories, arguing that a biopolitics of disability can often camouflage a biopolitics of debilitation, a structure of normalizing discourses and disciplinary practices that mark particular bodies as available for injury.<sup>10</sup> Contemplating this biopolitics of debility reveals a similar problem in school populations; particular students are marked and labeled in ways that make them more vulnerable for a wide variety of disciplinary actions, disciplinary actions that make up the school-to-prison pipeline. One of the strategies of the discipline and normalization is the disability label itself, as diagnoses applied unevenly among racialized and gendered students mark particular students as increasingly vulnerable or, to again use Puar’s frame, actively debilitated and subject to injury.<sup>11</sup> Debilitation is the

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<sup>8</sup> Benjamin Reiss and David Serlin, *Keywords for Disability Studies*, ed. Rachel Adams (New York: NYU Press, 2015).

<sup>9</sup> One such article that does engage these two categories is David Connor, Beth Ferri, and Subini Ancy Annamma, “Dis/Ability Critical Race Studies (DisCrit): Theorizing at the Intersections of Race and Dis/Ability,” *Race Ethnicity and Education* 16, no. 1 (January 2013): 1–31, doi:10.1080/13613324.2012.730511. DisCrit calls for joint interrogation of the racism and ableism and includes seven specific tenets. This article contributes to call for understanding the historical relationships between dis/ability and race both separately and together.

<sup>10</sup> At the American Studies Association Annual Meeting in Toronto, Puar mentioned that her forthcoming book, *States of Debility and Capacity*, delves further into the centrality of active debilitation to war machines and racial capitalism. She also notes this on her website and mentions the forthcoming title in Puar, “Coda.”

<sup>11</sup> This project rarely grapples with gender and sexuality despite their clear implications for both the school-to-prison pipeline and debilitation. This intersection is both a place for further research and a topic explored by many scholars including: Ann Arnett Ferguson, *Bad Boys: Public Schools in the Making of Black Masculinity*, 1st pbk. ed (Ann Arbor: University of Michigan Press, 2000); Nancy López, *Hopeful Girls, Troubled Boys: Race and Gender Disparity in Urban Education* (New York: Routledge, 2003); C. J Pascoe, *Dude, You’re a Fag: Masculinity and Sexuality in High School* (Berkeley: University of California Press, 2007); Pedro A. Noguera, *The Trouble With Black Boys: ...And Other Reflections on Race, Equity, and the Future of Public Education*, 1st ed. (Jossey-Bass, 2009).

systemic denial of opportunity leading to injury and harm. This project argues that the contemporary school-to-prison pipeline doubly debilitates students of color. This project also argues that the school-to-prison pipeline is related to but distinct from the prison industrial complex. Both systems are grounded in the historical project of debilitation that is foundational to the American project of defining full inclusion in the citizenry. Much has been written about the school-to-prison pipeline but the impact of racialized debilitation has been underappreciated.<sup>12</sup> This dissertation attempts to provide a more capacious understanding of both.

The American public school system has historically served as a conduit for debating, negotiating, and solidifying larger social anxieties regarding social inclusion and fitness. In the nineteenth and twentieth centuries debates about and arguments for social fitness comprised the preoccupation of eugenics as a field. Coined in 1883 by Sir Francis Galton, an English statistician and anthropologist, “eugenics” constitutes a modern scientific term that refers particularly to the ways modern nation-states shaped belonging within the citizenry.<sup>13</sup> Garland-Thomson writes, “The aim of modern eugenics was to rid society of the characteristics that dominant groups consider to be disabilities in

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<sup>12</sup> One scholar who connects the special education literature on disproportionate representation to the prison industrial complex is Erica R Meiners, *Right to Be Hostile: Schools, Prisons, and the Making Of Public Enemies* (New York: Routledge, 2007). Meiners however incorporates this as part of her theoretical frame and does not explore the history of this intersection. Analyzing the processes through which students are labeled “special education” through the framework of the prison industrial complex, Meiners asserts, “These educational practices become linked directly to practices of racial profiling that are endemic in state structures.” She further argues “schools attempt to naturalize racial profiling, endemic in school discipline and special education categories, and simultaneously function to normalize constructs of discipline and punishment as ‘logical’ and ‘just’ social practices.” This project expands on Meiners argument in order to demonstrate how such links are historically embedded and emerge from long standing intersections between race, disability, and punishment.

<sup>13</sup> Rosemarie Garland-Thomson, “Eugenics” in Benjamin Reiss and David Serlin, *Keywords for Disability Studies*, ed. Rachel Adams (New York: NYU Press, 2015).

the broadest sense, and often by extension, people with disabilities.”<sup>14</sup> Race and ability both constitute eugenic preoccupations, yet understanding the racial project of disability requires further historical excavation. This dissertation argues that disability and debility must be analytically distinguished in order to understand how the disproportionate categorization of students of color AS students with disabilities emerges from the shared history of scientific racism undergirding both racial and ability categories. Both categories fundamentally hinge on notions of fitness for and assimilability towards citizenship, categories requiring constant definition and enforcement. Adding to scholars who take a longer-term view, such as legal scholar Dean Hill Rivkin’s observation that schools have historically used a variety of methods “to expel, suspend, or otherwise push out students whose behaviors do not meet the rules, norms, or expectations of school systems,” this project aims for a deeper history of how schools do exactly that.<sup>15</sup> This project argues that school-to-prison pipeline has deep roots, beyond its commonly cited emergence in the 1990s, in America’s historic inequities.

The term “school-to-prison pipeline” is not without problems, and several scholars have sought to trouble and expand the term. Ta-Nehisi Coates recently wrote that, despite his sympathy to the authors of the phrase “School To Prison Pipeline,” he personally can’t use it, noting, “The phrase causes lightbulbs to go off among people who

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<sup>14</sup> Ibid. p.75. Garland-Thomson also expands on eugenic categorization writing, “What we now consider racial and ethnic variations, minority sexual orientation, behavioral deviance, criminality, aspects of gender differences, chronic illness, and even atypical temperaments have all counted as forms of biological inferiority understood as disabilities under the logic of eugenic science.” Additionally, David Mitchell and Sharon Snyder’s “Eugenic Atlantic” draws on Paul Gilroy’s “Black Atlantic” in an attempt “to fold disability and race into a mutual project of human exclusion based upon scientific management systems successively developed within modernity.”

<sup>15</sup> Dean Hill Rivkin, “Legal Advocacy and Educational Reform Litigating School Exclusion,” *Tennessee Law Review* 75 (2008 2007): 265..

are already skeptical of state and institutional power.’<sup>16</sup> Coates categorizes ‘School To Prison Pipeline’ with phrases such as “white privilege” and “Mass Incarceration” noting how such abstractions minimize and deaden what he calls “the very real violence that lurks behind the terms.”<sup>17</sup> Coates’ reasoned critique offers a caution for this project, as such shorthand can undoubtedly obscure the real and multi-faceted violence undergirding sites of social oppression and misery; this project uses the phrase repeatedly while attempting to avoid that very trap by elucidating the exercises of power and violence upon students of color labeled disabled in the public school system through an excavation of its genealogical origins. Furthermore, scholars who may not use the term school-to-prison pipeline itself describe the phenomenon of increasing discipline in public schools, including schools’ increased militarization and corporatization.<sup>18</sup> Henry Giroux writes, “Students in many schools, especially those in poor urban areas, are routinely searched, frisked, subjected to involuntary drug tests, maced, and carted off to jail.”<sup>19</sup> Still this focus on the pipeline itself, rather than the structure of public schools, ensures that reform remains incremental at best.

As contemporary activists, journalists, and scholars continue to work to identify and alleviate these disparities constitutive of the school-to-prison-pipeline, most locate the pipeline’s roots in 1990s school-based legislation, particularly zero-tolerance

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<sup>16</sup> Chris Bodenner Coates Ta-Nehisi, “Debating Mass Incarceration,” *The Atlantic*, September 16, 2015, <http://www.theatlantic.com/notes/all/2015/09/debating-mass-incarceration/405694/>.

<sup>17</sup> Ibid.

<sup>18</sup> David Gillborn, *Racism and Education: Coincidence or Conspiracy?* (London ; New York: Routledge, 2008); Kenneth J Saltman, *Education as Enforcement The Militarization and Corporatization of Schools*, 2nd ed (Hoboken: Taylor & Francis, 2010).

<sup>19</sup> Henry A. Giroux, *America on the Edge: Henry Giroux on Politics, Culture, and Education* (New York, N.Y.: Palgrave Macmillan, 2006). Giroux adds his analysis, “The not-so-hidden curriculum here is that kids can’t be trusted; their actions need to be regulated preemptively; and their rights are not worth protecting.”



policies.<sup>20</sup> Framed as a response to “a surge in juvenile crime in the 1980s,” this narrative obscures both the complexity and historical roots of this contemporary practice.<sup>21</sup> The “Breaking Schools’ Rules” report recounts this narrative, describing the 1980s and 1990s changes in juvenile justice laws as commensurate with the decades’ “tough on crime ideology,” citing President Clinton’s signing of the 1994 Gun-Free Schools Act as a particular example.<sup>22</sup> This dissertation’s argument joins scholars who eschew the simplicity of this explanation noting both the falsity of the supposed surge in juvenile crime during the 1980s and the policing practices in place in schools prior to the Columbine shootings.<sup>23</sup> Furthermore, this project writes against contemporary narratives of a “broken” system that implicitly connote a time when the system once worked, as even the ACLU study argues that school-to-prison pipeline practices ultimately undermine the “social fabric of schools.”<sup>24</sup> This history of a time when public schools “worked” remains only implied; the history of the American public school system demonstrates that its function and impact have always been limited in scope. Eschewing an implicitly positive assessment of schooling’s societal function requires examining the

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<sup>20</sup> While there are many scholars that make this argument the following article firmly argues that zero-tolerance policies are the most directly attributable. Nancy A. Heitzeg, “Education or Incarceration: Zero Tolerance Policies and the School to Prison Pipeline,” *Forum on Public Policy Online* 2009, no. 2 (2009), <http://eric.ed.gov/?q=school+to+prison+pipeline&id=EJ870076>. ruges that

<sup>21</sup> “The School-to-Prison Pipeline,” *The New York Times*, May 30, 2013, sec. Section A; Column 0; Editorial Desk; Editorial. This New York Times editorial echoes another common narrative explanation, placing pipeline’s emergence in response to, “a surge in juvenile crime during the 1980s and the Columbine High School shootings a decade later.”

<sup>22</sup> Tony Fabelo et al., “Breaking School’s Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement” (Council or State Governments Justice Center and the Public Policy Research Institute, Texas A&M University, July 2011).

<sup>23</sup> Rivkin, “Legal Advocacy and Educational Reform Litigating School Exclusion.”

<sup>24</sup> “A Violent Education: Corporal Punishment of Children in U.S. Public Schools,” *American Civil Liberties Union*, accessed August 21, 2013, <https://www.aclu.org/human-rights-racial-justice/violent-education-corporal-punishment-children-us-public-schools>.

interconnectedness and simultaneity of the creation and maintenance of both the public school system and the school-to-prison pipeline in order to illuminate their constitutive relationship and connection to notions of power, knowledge, and citizenship.

This dissertation does not contribute original research on the contemporary school-to-prison pipeline but rather uses the phenomenon as a starting point for a historical excavation. This critical historical interrogation of the state through an examination of the negotiations regarding race and disability in the public school system connects critical race theory, disability studies, educational reform scholarship, prison reform scholarship, legal scholarship, political theory, sociology, American history, and American Studies scholarship. This interdisciplinary model illuminates that the innovation sparking the school-to-prison pipeline is not that particular students are newly disenfranchised but rather that the solidification and expansion of the prison-industrial complex as a deliberate response to economic surpluses allows for a new way of segregation and disciplining students deemed unassimilable to citizenship.<sup>25</sup>

In sum, the disproportionate representation of students of color in both disability categorization and discretionary discipline proves characteristic of the school-to-prison pipeline. While special education supposedly emerges as a protective category, its origins lie not in concepts of educating students, but in deeply embedded notions of who belongs in the citizenry, who should be educated as such, and who must be marked as different. As such, the category of disability remains unstable, changing over time, diagnosed differently across districts and inextricably linked to other aspects of students'

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<sup>25</sup> More on this argument regarding the prison industrial complex comes later in this project, but is derived from Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007). Another scholar who draws on Gilmore's work to expand the definition of the prison industrial complex to include schools is Erica Meiners in *Right to Be Hostile*. Engagement with Meiners work appears at various points throughout this dissertation.

identities.<sup>26</sup> Fundamentally, the culture and organization of schools is a product of white supremacy in a carcereal state which situates non-white youth as deficient. Despite the substantive analysis of the current problem of disproportionate representation, such scholarship on the history of disability and special education often remains isolated from other factors related to the school-to-prison pipeline. Exploring the historical roots of the power relationships embedded in institutions like schools is essential for education practitioners, critics, and reformers to understand how best to alter structures such as the school-to-prison pipeline moving forward.

Special education students' disproportionate presence in jails and correctional facilities constitutes part of the school-to-prison pipeline.<sup>27</sup> Several studies demonstrate the increased prevalence of incarcerated youth receiving special education services,

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<sup>26</sup> While a more detailed discussion of the field of disability studies begins on page 16, the intellectual frames situating disability as a category in need of constant definition and renegotiation have similarities to work on racial formation, works that are central to this project. Omi and Winant's work on racial formation demonstrates how structural and cultural dimension constructed and transform race. Building off Omi and Winant's work and the work of critical race theory, various scholars to show how a wide range of social, political and economic practices have racial meaning. From George Lipsitz's cataloging of the ways in which power, property and race combine to maintain allegiances to white supremacy to David Roediger's demonstration of how benefits associated with whiteness could serve as a 'wage,' thus making whiteness as a way that white workers responded to wage labor and capitalist work discipline, such scholarship helps illuminate how subtle structural shifts in Texas' education system are imbued with racial meaning. Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s*, 2nd ed (New York: Routledge, 1994); David R Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class*, Rev. ed (London: Verso, 1999); George Lipsitz, *The Possessive Investment in Whiteness: How White People Profit from Identity Politics*, Rev. and expanded ed (Philadelphia: Temple University Press, 2006); Stefancic and Delgado, *Critical Race Theory*.

<sup>27</sup> Mary Magee Quinn, Robert B. Rutherford, and Peter E. Leone, "Youth With Disabilities in Juvenile Corrections: A National Survey," *Exceptional Children* 71, no. 3 (Spring 2005): 339–45; Richard J. Morris and Kristin C. Thompson, "Juvenile Delinquency and Special Education Laws: Policy Implementation Issues and Directions for Future Research," *Journal of Correctional Education* 59, no. 2 (June 1, 2008): 173–90; Nicole Pyle et al., "Individual-Level Risk Factors of Incarcerated Youth," *Remedial and Special Education*, June 30, 2015, 0741932515593383, doi:10.1177/0741932515593383; Peter E. Leone, Sheri M. Meisel, and Will Drakeford, "Special Education Programs for Youth with Disabilities in Juvenile Corrections," *Journal of Correctional Education* 53, no. 2 (2002): 46–50; Alfredo J. Artiles et al., "Justifying and Explaining Disproportionality, 1968–2008: A Critique of Underlying Views of Culture," *Exceptional Children* 76, no. 3 (April 1, 2010): 279–99, doi:10.1177/001440291007600303.

estimating the percentage of incarcerated students with disabilities from 30 to 70 percent.<sup>28</sup> The unequal treatment for students labeled disabled has been well documented by organizations such as the ACLU, which also found that students with disabilities disproportionately receive corporal punishment, a practice that further physically disables debilitated students.<sup>29</sup> In addition to the story of Cedric Napoleon, a 2009 *Texas Tribune* article by Emily Ramshaw calls attention to the frequent practices of restraining students with disabilities in Texas public schools. Ramshaw's articles features anecdotes from students, images of student injuries, and a chart breaking down the percentage of restraints by type of disability.<sup>30</sup> Citing data from the U.S. Government of Accountability Office study, which found restraints used by untrained teachers on non-physically aggressive students, Ramshaw's reviews only Texas incidents.<sup>31</sup> Her analysis shows that students with disabilities in the state were physically restrained approximately one hundred times a day in the 2007-08 school year.<sup>32</sup> The article also cites individual

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<sup>28</sup> Michael P. Krezmien, Candace A. Mulcahy, and Peter E. Leone, "Detained and Committed Youth: Examining Differences in Achievement, Mental Health Needs, and Special Education Status," *Education and Treatment of Children* 31, no. 4 (2008): 445–64; Pyle et al., "Individual-Level Risk Factors of Incarcerated Youth"; Jill A. Gordon and Page Malmsjo Moore, "ADHD among Incarcerated Youth: An Investigation on the Congruency with ADHD Prevalence and Correlates among the General Population," *American Journal of Criminal Justice* 30, no. 1 (September 2005): 87–97, doi:10.1007/BF02885883; Leone, Meisel, and Drakeford, "Special Education Programs for Youth with Disabilities in Juvenile Corrections."

<sup>29</sup> "ACLU of Texas | Educate, Don't Incarcerate," accessed August 12, 2011, <http://www.educatedontincarcerate.org/>; Sam Dillon, "Disabled Students Are Spanked More," *The New York Times*, August 11, 2009, sec. Education, <http://www.nytimes.com/2009/08/11/education/11punish.html?scp=31&sq=texas%20school%20disabilities&st=cse>.

<sup>30</sup> "Disabled Students Restrained, Injured in Public Schools, by Emily Ramshaw," accessed August 21, 2013, <http://www.texastribune.org/texas-state-agencies/aging-and-disability-services/disabled-students-restrained-in-public-schools/>.

<sup>31</sup> "Seclusions and Restraints."

<sup>32</sup> Ramshaw suggests the numbers point to a crisis in Texas education, possibly driven by teachers' lack of proper training to manage students' disabilities.

anecdotes—including Cedric’s story from the introduction, though it does not mention him by name—such as that of a severely disabled teenager restrained forty times at her high school in Kemp, Texas.<sup>33</sup> Ramshaw notes, “Officials with the Texas Education Agency say they started collecting special education restraint data and training teachers in restraint alternatives in 2004, after the Killeen boy’s restraint death.” This incident was Cedric’s murder.<sup>34</sup> The state does not require districts to track restraints of general education students. The disproportionate rate that students labeled disabled are physically punished establishes the extent to which these students are debilitated, marked for injury. While such physical violence represents an extreme form of penalization impacting students with disabilities, special education students further grapple with additional challenges to educational achievement and attainment, including punishments like suspension and expulsion.

Studies from education, criminal justice, sociology, and psychology highlight the excessive over-representation of African-American students and students with disabilities in all segments of the pipeline. Being either a student of color or a student with a disability increases a students’ likelihood of being subject to such discretionary discipline. The combination creates a population further debilitated in terms of their vulnerability to state violence. Over time, a wide swath of scholars and government agencies continue to ask whether students of color are over represented in special education programs and the answer continues to be a resounding yes.<sup>35</sup> A 2011

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<sup>33</sup> “Disabled Students Restrained, Injured in Public Schools, by Emily Ramshaw.” Ramshaw writes of Cedric’s story; “In 2004, an emotionally disturbed boy trying to leave the classroom for lunch died of suffocation after his Killeen teacher sat on him to restrain him.”

<sup>34</sup> Emily Ramshaw, “Disabled Students Restrained, Injured in Public Schools,” November 2, 2009, <http://www.texastribune.org/2009/11/02/disabled-students-restrained-in-public-schools/>.

<sup>35</sup> Michael Cooper, “Report Shows Racial Disparity In Special Education Programs,” *The New York Times*, May 19, 2004, sec. N.Y. / Region, <http://www.nytimes.com/2004/05/19/nyregion/report-shows-racial->

longitudinal study found exactly that; nearly 75 percent of special education students were suspended or expelled during the study, but also that those labeled “emotionally disturbed,” like Cedric, were particularly vulnerable to discretionary discipline. Comments from the 2012 Congressional testimony on the school-to-prison pipeline summarize these findings, noting both that minority students are more likely to be punished than white students committing the same infraction and that students with disabilities are more likely to receive suspensions than those without.<sup>36</sup> Students of color are also both more likely to be labeled disabled and more likely to be punished at school.

Other studies have shown that African-American students are not only overrepresented in special education as a whole but also assigned the most stigmatized special education labels based on their disproportionate representation across all of the legally sanctioned disability categories. The greatest disproportionality occurs in the categories of mental retardation and emotional disturbance.<sup>37</sup> Kathy Anne Jordan, drawing on the 23<sup>rd</sup> Annual Report to Congress regarding the implementation of the *Individuals with Disabilities Education Act* (IDEA), argues this point; African American students are not only overrepresented but also assigned the most stigmatized labels based

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disparity-in-special-education-programs.html; Amanda L. Sullivan and Alfredo J. Artiles, “Theorizing Racial Inequity in Special Education Applying Structural Inequity Theory to Disproportionality,” *Urban Education* 46, no. 6 (November 1, 2011): 1526–52, doi:10.1177/0042085911416014.

David J. Connor and Beth A. Ferri, “Integration and Inclusion: A Troubling Nexus: Race, Disability, and Special Education,” *The Journal of African American History* 90, no. 1/2 (January 1, 2005): 107–27.

<sup>36</sup> This needs to be the congressional testimony from number 1.

<sup>37</sup> The Government Accountability Office report also found male students three times as likely as female students to be labeled seriously emotionally disturbed and two and a half times as likely to be considered learning disabled. “Education: Disparities Still Exist in Who Gets Special Education,” accessed January 24, 2014, <http://www.gao.gov/products/IPE-81-1>. Also see Pyle et al., “Individual-Level Risk Factors of Incarcerated Youth”; Michael Rozalski et al., “Assessing the Relationships Among Delinquent Male Students’ Disruptive and Violent Behavior and Staff’s Proactive and Reactive Behavior in a Secure Residential Treatment Center,” *Journal of Emotional and Behavioral Disorders* 17, no. 2 (June 2009): 80–92, doi:10.1177/1063426608324098.

on their disproportionate representation across all of the legally sanctioned disability categories, with the greatest disproportionally occurring in the categories of mental retardation and emotional disturbance.<sup>38</sup> Other secondary scholarship focuses both on the category itself and the ways in which students of color or students from low-income backgrounds are continually overrepresented.<sup>39</sup> Students with disabilities data collected by the U.S. Department of Education in the early 1990s found that while African American students made up 16.1 percent of public school students, they comprised 32 percent of students with a mild mental disability (MMD), 24 percent of students with serious emotional disturbance (SED), and 18 percent of students with a specific learning disability (LD).<sup>40</sup> A more recent government report found, African American students still accounted for approximately the same percentage of the public school population, yet 33 percent of all students with a MD, 27 percent of students with SED, and 18 percent of students with LD.<sup>41</sup> Students labeled with Emotional/Behavioral Disorder (EBD) face

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<sup>38</sup> Kathy-Anne Jordan, "Discourses of Difference and the Overrepresentation of Black Students in Special Education," *The Journal of African American History* 90, no. 1/2 (January 1, 2005): 128–49.

<sup>39</sup> Beth Harry and Janette K. Klingner, *Why Are So Many Minority Students in Special Education?: Understanding Race & Disability in Schools* (Teachers College Press, 2005); Thomas Hehir, *New Directions in Special Education: Eliminating Ableism in Policy And Practice* (Harvard Education Press, 2005); Douglas H. Jones, Jerome Sacks, and Randy Elliot Bennett, "A Screening Method for Identifying Racial Overrepresentation in Special Education Placement," *Educational Evaluation and Policy Analysis* 7, no. 1 (April 1, 1985): 19–34, doi:10.2307/1164000; Daniel J. Losen, Gary Orfield, and James M. Jeffords, *Racial Inequity in Special Education* (Harvard Educational Pub Group, 2002); Pedro Noguera, *The Trouble with Black Boys: Essays on Race, Equity, And the Future of Public Education*, 1st ed (San Francisco: Jossey-Bass, 2008); Allan G Osborne, *Discipline in Special Education* (Thousand Oaks, Calif: Corwin Press, 2009). Many scholars have replicated these findings and demonstrate the extent of this disproportionate representation of students of color labeled as special education.

<sup>40</sup> Tori Kearns, Laurie Ford, and Jean Ann Linney, "African American Student Representation in Special Education Programs," *The Journal of Negro Education* 74, no. 4 (October 1, 2005): 297–310.

<sup>41</sup> Ibid.

further disproportionate representation in the juvenile justice system.<sup>42</sup> Each of these diagnoses requires substantive inference on the part of the professional completing the diagnosis, as the categories themselves lend validity to an inherently subjective process.<sup>43</sup>

Numerous reports and inquiries replicate these findings, and many scholars have also undertaken explaining and theorizing this overrepresentation.<sup>44</sup> Tori Kearns, Lauri Ford, and Jean Ann Linner synthesize key theories regarding this disproportionate representation, including, but not limited to: lack of cultural exposure theory, considered especially applicable to students growing up in poverty; disparity between African American learning styles and classroom pedagogy; notions of genetic inferiority and effects of racism, apathy, and self-concept among African American students; bias in referrals of African American students; bias in testing African American students; and errors in decision making.<sup>45</sup> Several other scholars also name referral and assessment bias as key contributors to these labeling disparities.<sup>46</sup> Carla O'Connor and Sonia DeLuca

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<sup>42</sup> Pyle et al., "Individual-Level Risk Factors of Incarcerated Youth"; Joseph C. Gagnon et al., "Juvenile Correctional Schools: Characteristics and Approaches to Curriculum," *Education and Treatment of Children* 32, no. 4 (2009): 673–96.

<sup>43</sup> Carla O'Connor and Sonia DeLuca Fernandez, "Race, Class, and Disproportionality: Reevaluating the Relationship between Poverty and Special Education Placement," *Educational Researcher* 35, no. 6 (2006): 6–11.

<sup>44</sup> Jacob Hibbel, George Farkas, and Paul L. Morgan, "Who Is Placed into Special Education?," *Sociology of Education* 83, no. 4 (October 1, 2010): 312–32; O'Connor and Fernandez, "Race, Class, and Disproportionality"; Kearns, Ford, and Linney, "African American Student Representation in Special Education Programs"; Thomas S. Serwatka, Sharian Deering, and Patrick Grant, "Disproportionate Representation of African Americans in Emotionally Handicapped Classes," *Journal of Black Studies* 25, no. 4 (March 1, 1995): 492–506; Wanda J. Blanchett, "Disproportionate Representation of African American Students in Special Education: Acknowledging the Role of White Privilege and Racism," *Educational Researcher* 35, no. 6 (August 1, 2006): 24–28; Losen, Orfield, and Jeffords, *Racial Inequity in Special Education*.

<sup>45</sup> Kearns, Ford, and Linney, "African American Student Representation in Special Education Programs."

<sup>46</sup> "Education: Disparities Still Exist in Who Gets Special Education," Report To The Chairman, Subcommittee On Select Education, Committee On Education And Labor, House Of Representatives (United States Government Accountability Office, September 30, 1981), <http://www.gao.gov/products/IPE-81-1>. Appendix I cites Blaschke, C.L. "Case Study of the Implementation of Public Law 94-142," prepared



Fernandez critique a 2002 National Research Council report identifying poverty as the key risk factor for compromised development. O'Connor and Fernandez argue that such a theory oversimplifies "development" by ignoring how both the culture and organization of schools situates minority youth as deficient.<sup>47</sup> Others, like Wanda J. Blanchett, argue that white privilege and racism contribute to and maintain these disparities through a combination of disparate funding, culturally inappropriate curriculum, and inadequately prepared educators.<sup>48</sup> While each of these contemporary explanations contributes to understanding contemporary disproportionality in disability, they fail to grapple with the historical origins of disability as a racialized practice.

The thriving and growing field of disability studies provides both a place of theoretical convergence and additional analytical terms for understanding the construction and contestation of disability. A growing range of social interpretations focuses on disability, identity, embodiment, and discourse, rejecting medical models that tend to pathologize difference. Disability studies, once located primarily in applied fields like medicine and social work, now resides under a larger category of identity studies, including race and ethnic studies, gender studies, and queer studies.<sup>49</sup> Disability studies further intersects with additional disciplines including sociology, psychology, history, and literature, where a wide variety of scholars elucidate the connections between constructions of corporeal otherness, including race, gender, and disability in political

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for DHEW, Bureau of Education for the Handicapped (Contract No. 300-77-0528); Washington, D.C.: Education Turnkey Systems, Inc. (May 1979), though I was unable to find this study myself.

<sup>47</sup> O'Connor and Fernandez, "Race, Class, and Disproportionality."

<sup>48</sup> Blanchett, "Disproportionate Representation of African American Students in Special Education."

<sup>49</sup> Rosemarie Garland-Thomson, "Integrating Disability, Transforming Feminist Theory," *NWSA Journal* 14, no. 3 (October 1, 2002): 1–32.

and cultural arenas.<sup>50</sup> In a specific example, Sharon Snyder and David Mitchell's *Cultural Locations of Disability* examines cultural spaces designated for disabled citizens, including institutions for the feeble-minded, demonstrating that these institutions emerge in the legislature as eugenics gains prominence as a discipline.<sup>51</sup>

While much of contemporary disability studies rejects the medical model of disability, understanding the medical model's role in shaping knowledge about disabilities helps clarify precisely what proves problematic. A clinical model requires expert knowledge—including but not limited to that of physicians, special educators, counselors—to help “fix” some sort of difference. Susan Gabel outlines several key misapplications of the medical model; using diagnosis to treat condition that actually stem from institutionalized impression; reproducing myths used to stigmatize labeled individuals and groups; and generally dehumanizing those with limitations. “There is also

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<sup>50</sup> One scholar who particularly theorizes the intersection of disability studies and queer studies is Robert McRuer. McRuer's crip theory examines “the fact that homosexuality and disability clearly share a pathologized past.” While McRuer's work offers a model for how to consider the intersection of disability studies and pathologized difference, his work does not grapple with the intersection of race and disability (much like mine does not include the intersection of sexuality). Robert McRuer, *Crip Theory: Cultural Signs of Queerness and Disability*, Cultural Front (New York: New York University Press, 2006).

<sup>51</sup> Sharon L. Snyder and David T. Mitchell, *Cultural Locations of Disability* (Chicago: University of Chicago Press, 2010). For another fascinating argument on the emergence of disability and time see Baynton, ““These Pushful Days.”” Disability scholars' engagement with intersectionality and the particularities of time and space have led to insights regarding the broad impact of time for conceptualizing difference. Douglas C. Baynton chronicles a transformation in social attitudes at the start of the twentieth century brought about by the international eugenics movement. Baynton argues that changing conceptions of time, both quotidian and historical, led to the theory's salience and appeal. Undergirded by both the competitive industrial economy and evolutionary theory, analogies of competition became commonplace and new language to describe disability entered the everyday lexicon. Additionally, new societal structures, including educational policy emerged, fearful of the impact students with “defects” might have on “normal” children in the classroom. Baynton cites the eugenics movement's characteristic fear of disability as rooted in this unsettling and unfamiliar understanding of time. Common notions of infirmity and affliction, grounded in notions of an essentially unchanging world, precede this change to an emphasis on handicap. Baynton notes that both concepts gave way to the idea of handicapped by the 1890s. Furthermore, disability could now serve as a handicap in two races: the economic and the evolutionary. The perceived competitive fight for the future led to a pervasive feeling of the need to use time more efficiently; such a shift destabilized both historical and quotidian time. This emphasis on efficiency also has its own profound impact on schools, as this shift occurred during the institutionalization of schools.

the danger—identified by various stakeholder groups—of the assimilation of disability culture through the use of the medical model to “cure people when the results could be cultural genocide.”<sup>52</sup> Gabel cites the examples of “curing” deafness eliminating Deaf culture or “curing” Dwarfism eliminating Little people. Instead Gabel asks the question: “How can education be organized to prevent the institutionalized oppression of any student?”<sup>53</sup> Disabilities advocates, drawing upon civil rights rhetoric previously employed in the fight against segregation, found some success in their efforts to battle such oppression in later half of the twentieth century. However, drawing upon civil rights rhetoric rather than deeply grappling with the ways in which disability has been racialized limits the answer to this question. Despite a substantive and ongoing fight for educational expansion and equity, today’s public schools often function as a conduit for institutionalized oppression in line with their original intent.

This project is arranged in roughly chronological order. The following chapter, Chapter 2, examines the solidification of the public schools in Texas as the construction, continuations, and contestation of administrative structures create the conditions for debilitation. This chapter briefly chronicles the establishment of Texas as a state and the events leading to the current state constitution. The state constitution establishes the conditions for the debilitation of non-white men. Following the establishment of the current state government, at the end of the nineteenth and start of the twentieth century, as Texas established schools for white and black students, Texas also constructed asylums, reformatories, and jail houses to deal with other aspects of the citizenry deemed unfit for full participation. While these institutions were created and functioned

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<sup>52</sup> Susan L. 1956-(Susan Lynn) Gabel, *Disability a in Education*, vol. 3, *Disability Studies in Education* (P. Lang, 2005). 8.

<sup>53</sup> *Ibid.* 10.

separately, similar discourses and assumptions regarding individual and group fitness for state and national belonging contribute to both their establishment and daily operation. Here in the daily functioning of schools and institutions led to the actual injury and harm wrought to those debilitated by state definition comes to light. Chapters 2 further examines the intersections between eugenicist discourses and categorizations of ability, which includes both the definition and application of “feeble-mindedness,” and the creation of special education programs not yet called by that name, by tracing the history and construction of intellectual disability in public schools as notions of disability transform in the late nineteenth and early twentieth centuries along with the start of the eugenics movement. In particular, this chapter examines the care of the “feeble-minded and insane” citizens in Texas and the unnamed racial aspects of those definitions. In order to understand the racial underpinnings of asylum care, this chapter further explores the connections to the establishment of juvenile justice in Texas. Finally, Chapter 2 covers the actual assessment tools used to determine mental ability, particular the use of intelligence quotient (I.Q.) testing. As many scholars have demonstrated, I.Q. testing’s use as an evaluative tool for ability assessment allows for generalizations about racial group intelligence that are fundamentally distorted, serving instead as another mechanism for reifying, normalizing, and maintaining whiteness. One of the ways students have historically been classified as mentally able or disabled has been through testing.

I.Q. testing’s particular function for evaluating racial groups receives additional attention in Chapter 3, “Assessing Race, 1920-1953.” This chapter demonstrates how the ambiguous racial status of Mexican Americans with the racial binary of the Texas constitution that specifies only white and Negro requires a constant reassertion of

Mexican Americans as non-white in custom and practice.<sup>54</sup> Denied access to equal education through both deliberate segregation and additional pedagogical practices, such as a lack of enforcement of compulsory attendance laws, Mexican-American activists fight legally and practically to attempt to secure a more equitable education. Chapter 3 examines several such court cases. Despite their seeming legal victories, Mexican Americans in the state encounter additional practices that allow white officials to maintain segregation in practice despite its supposed illegality. Chapter 3 also examines the work of education scholar and activist George I. Sanchez, including his scathing critique of the use of I.Q. testing for categorizing or generalizing about Mexican American students. Finally, Chapter 3 examines how while Mexican-American reformers fought for whiteness, progressive reformers concerned about white children's well-being led to Texas' first special education programs; in the midst of these discourses regarding what constitutes white or non-white, the state of Texas formally institutionalizes Special Education under that name, maintaining a medicalized model of disability despite the decline of eugenics as a social movement after the Holocaust. This chapter explores that solidification and its conceptual and practical overlap with racial classification and segregation.

Given that racial science, social customs, and government policies sufficiently supported the explicit segregation of African-American students and citizens through 1954, African-American citizens continue to challenge the fundamental legality of racial

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<sup>54</sup> The simplistic racial binary in Texas' governing Constitution stipulates only the segregation of "white" and "Negro" children, leaving Mexican American children in an ambiguous place legally, but, in many districts across the state, unambiguously separated into segregated schools and classes, classified by appearance, language-ability, and/or surname. The ongoing legal challenges Mexican American students' classification as white, reveal the anxieties around creating, negotiating, and solidifying whiteness.

segregation. While the *Brown v Board* decision represents a key success in this fight, eliminating the Federal acceptability of African American students' segregation and disavowing the conceptual underpinnings of the racial subordination of African American citizens, the response following the case demonstrates the extent to which investments in white supremacy retain their salience. The actual responses to the case in the state of Texas demonstrate the limits of a legal victory on the diffuse and deep-seated commitments to white supremacy. Chapter 4, "Massive Resistance and Revised Racial Debilitation, 1954-1979" analyzes several disparate responses to the ruling including the recommendations of the Governor-supported Texas Advisory Committee of Segregation in Public Schools, the actual experiences of African-American students attending white schools, and the message communicated by a video funded and created by Dallas businessmen. Chapter 4 also traces the protracted legal fight aimed at seeing the vision embedded in *Brown* in practice, which leads to new attempts to achieve integration, including busing. The definitive illegality of racial segregation also did not preclude other forms of classification and segregation following *Brown*, and despite continuing legal victories racial desegregation rarely occurs. Chapter 4 explores the shift from de jure to de facto segregation, which involves the deliberate deployment of many of the same tactics used to ensure the segregation of Mexican-American students legally defined as white earlier in the century. Furthermore, shifting racial categorizations allow for the continued valuation of whiteness, as Mexican-American classification as white citizens allowed for desegregation plans pairing only Mexican-American and African-American students, maintaining the practical segregation of students of color. Chapter 6 also examines how following some degree of forced integration other explicit disciplinary practices, such as corporal punishment, dramatically increase. Chapter 4 finally explores how the supposedly race-neutral language of special education constitutes a primary way

to debilitate non-white students following forced integration through court-ordered busing. The subjective classification required of specific special education categories undergirds the intensification of disproportionate racial representation following the end of legal racial segregation. Parents' and disability activists' continued efforts to ensure fair and appropriate education led to the federal codification of special education protections, yet such protections failed to fundamentally alter the systemic debilitation of students of color.

Despite the uneven recognition of race in disciplinary evolutions before 1980, the ascendancy of neoliberalism leads to the invocation of a systemic crisis derived from an explicit fear that the public school system insufficiently serves the economy's human capital needs, while relying on historical amnesia to obscure its implicitly racialized nature. This crisis authorizes the use of explicit market logics and harsher disciplinary policies in the operation of public schools. Chapter 5, "Risk, Amnesia, Testing, and Ticketing, 1980-2001," explores the use of this invocation to justify increased intervention in the school system by examining Ross Perot's appearance at the 1984 Texas Special Legislative session calling for reform through increased regulation, particularly through testing. This initial reform marks the beginning of increased testing regulation in Texas, a system Texas' then exports through federal legislation driven by President George W. Bush, No Child Left Behind (NCLB). NCLB presents a moment of unprecedented federal intervention, modeled after Texas' statewide testing system and signed by the Texan president. Looking at today's privately administered tests in conjunction with the concurrent national discussion around education allows for an understanding of the particularly neoliberal character of this transformation. The use of testing to create and enforce racial and ability lines contributes to its foundational role in today's educational disparities. Even successful efforts to outlaw I.Q. testing as an

evaluative method for students fails to preclude either the tests use or the prevention growth of other forms of testing in public schools. This racialized crisis also allows for increasingly punitive disciplinary policies and Chapter 5 examines the re-write of youth discipline in 1995 and the advent of zero-tolerance disciplinary policies. Finally, Chapter 5 argues that while the spatiotemporal location of school-to-prison pipeline in the neoliberal U.S. nation-state relies heavily on the contemporary prison-industrial complex, it emerges in conjunction with, not because of, this societal transformation. The prison-industrial complex emerges post-1980 as a phenomenon of exploding incarceration occurs in conjunction with larger political and economic shifts, particularly this ascendancy of neoliberalism as the dominant governing logic. This emphasis on wealth as arbiter denies discussion and inquiry regarding historic wealth inequality in a society built on slavery.<sup>55</sup>

Chapter 6 revisits the contemporary school-to-prison pipeline and examines twenty-first century iterations of testing and punishment debilitating students today. A wide variety of statistics and stories demonstrate the culmination of historical practices

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<sup>55</sup> Numerous education scholars also interrogate neoliberalism and its impacts on public education, as this market logic applied to schools normalizes neoliberal educational practices by coupling a belief in the supremacy of economic success with a corresponding historical amnesia particularly in regards to racial injustice. Castronovo argues that neoliberalism makes this task of putting time and space back together still more complicated “under neoliberalism, temporalities and spaces lose their multiplicity and are governed by a market sensibility of supposed individual freedom that in actuality is the abandonment of the social contract.” Among education, scholars, including Michael Apple, have demonstrated how this same reification of economic rationality translates to educational practices from privatization to philanthrocapitalism to state control. Practices of privatization range from smaller capitalist partnerships around particular aspects of the educational experience to complete for-profit schools. Philanthrocapitalism, as outlined by Diane Ravitch, becomes an increasingly common practice as private capital controls increasingly more wealth and looks to apply business practices to philanthropy. The practices, along with increasing federal intervention marked by No Child Left Behind, are part of the continual market logic applied to a school system still segregated by race and class. This market logic has had an important impact on public schools, and has also transformed practices of incarceration. Additionally, as Frederick Hess argues in his article on philanthropy and school reform, philanthropists’ positive intentionality demands recipients’ consensus and collaboration as givers “tend to shy away from structural reforms that challenge existing arrangements.”



affirming white supremacy through the double debilitation of students of color. This chapter examines the increased police presence in schools, the expansion of high-stakes testing, and the continued revision of exclusionary disciplinary practices. Chapter 6 also explores how new iterations of historical practices of disenfranchisement in public schools align with the contemporary prison industrial complex allowing for the pipeline's existence and the ongoing debilitation of students of color. Finally, the conclusion returns to the story of Cedric Napoleon that opens this dissertation to revisit the long history of Cedric's tragically truncated life in light of the deliberate debility in the public school system. At this intersection of race and disability students disproportionately receive corporal punishment, suspensions, expulsions, and referrals to juvenile and criminal penal systems. Similar yet distinct notions of a lack of fitness for the citizenry and supposedly scientific forms of knowledge imbue both identity categories and their intersections. Ultimately, both explicitly racist practices and explicitly reform minded practices contribute to the system's coalescence around its foundational investments of normalcy—grounded in both racial and ability categories. Even positive intentionality here is haunted by a will to correct what is constitutionally inassimilable, a will to dispose of those who fail to approximate to an "ideal" citizen, a will that is constitutive of the afterlife of slavery. Put another way, basic commitments to fix what wrong with persons of color implicit in each regime of emancipation/liberation correspond with a refusal to engage with the recapitulation of white privilege/mastery that supports the contemporary school-to-prison pipeline resulting in both premature death and truncated life choices for students debilitated in today's society. Such a clear convergence in lived experience calls up on us to meaningfully change the terms of the debate and alter the stakes for students whose premature death is less clear-cut, but no less real, than Cedric's.

## Chapter 2: Teaching Texas: Organizing and Assessing Ability, 1860-1929

The statistics of wealth show that productive capacity rises and falls directly with the increase or decrease of education and training in a state or nation. Moreover, the ideals of the citizens of a state depend to a large extent upon their educational training. If Texas is to preserve the traditional of ideal citizenship, as derived from her early heroes, she must safeguard the rights of her children to have an opportunity for an education.<sup>56</sup>

This quote from a 1921 report on education in Texas prepared for the Governor and legislature links the role of public education in Texas not only to economic productivity, but to a clear concern for “ideal citizenship.” While this ideal citizenship remains undefined in this particular report, the creation of public schools and other institutions for youth in Texas demonstrate longstanding intersections between categories of race and ability, linked by punishment. Practices of schooling cannot be separated from larger historical projects of state and citizen making, and the rights of citizenship, at the moment of founding, were explicitly circumscribed by race.<sup>57</sup> The same debates that established the shape of the United States Constitution solidified the status of slaves as part person, part property.<sup>58</sup> The moment of the nation’s founding then solidifies a commitment to

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<sup>56</sup> *Report on Education in Texas and Recommendations Made to the Governor and the Thirty-Seventh Legislature*, ([Austin], 1921), <http://hdl.handle.net/2027/loc.ark:/13960/t82j6wg6b>.

<sup>57</sup> Importantly, the formation of the United States following the colonies’ break with England did not represent a wholesale break from the theories and investments of government previously established. The debates surrounding the United States Constitution evidence a heavy reliance on liberal ideas, as liberalism emphasizes the state’s role in securing the right of individuals in civil society and establishes rationality as appropriation and acquisitiveness. The United States Constitution creates key structures to solidify the rights of the individual and prescribes procedural mechanisms to defend those very rights. Dewey, *The Public and Its Problems*. Addis, *Jefferson’s Vision for Education, 1760-1845*; Jefferson, *Notes on the State of Virginia*; Post, “Jeffersonian Revisions of Locke.”

<sup>58</sup> David Goldberg argues that the history of the modern state and racial definition are intimately related, and that homogeneity serves as a crucial characteristic of state belonging. The modern state then as the space of white men, Goldberg continues, uses increasing bureaucratization, the rule of law, and the control of capital as increasingly sophisticated form of racial formation, power, and exclusion. Even without a clear commitment to white supremacy, liberalism’s belief in the socially unencumbered individual, the sanctity of individual interests, and the freedom to choose preclude its ability to recognize race due to its socially

white supremacy, a commitment that underlies liberalism's engagement with race, a topic examined by scholars from Alexis DeTocqueville to David Goldberg.<sup>59</sup> While the state itself is inextricable both from those who belong to its citizenry and those who serve it, administrative and bureaucratic technologies, such as schools, order human interaction.<sup>60</sup> The role of education in defining the state comprises a key preoccupation for political theorists grappling with ideas related to the creation and maintenance of the polity; from Plato and Aristotle to the founders themselves, such as Jefferson, concern with societal ideals and social stability accompanies discussions of the purpose of education, formal or otherwise.<sup>61</sup> Debates over education during the drafting of the United States Constitution ultimately led to the exclusion of educational oversight from federal powers. As a result, education developed disparately throughout United States history and the investment in and solidification of geographic boundaries play an important role in this story; the boundaries of the nation, the state, and individual towns and school districts each impact

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constructed relational nature. Thus a key problem of the liberal state is that liberalism fundamentally fails to understand race, despite the fact that nation state itself has been foundationally shaped by race. Goldberg, *The Racial State. The Federalist Papers* (Harmondsworth, Middlesex, England: Penguin Books, 1987).

<sup>59</sup> David Theo Goldberg, *The Racial State* (Malden, Mass: Blackwell Publishers, 2002); Alexis de Tocqueville, *Democracy in America*, Library of America 147 (New York: Library of America : Distributed to the trade in the U.S. by Penguin Putnam, 2004).

<sup>60</sup> John Dewey wrote, "The concept of the state, like most concepts which are introduced by 'the,' is both too rigid and too tied up with controversies to be of ready use." Dewey himself surveys many of historical political theorists and philosophers considered to be essential contributors to the nature of the state, but argues that the concept of the public proves constitutive of the state in part because the state's purpose involves regulating those actions that have unintended consequences on others. John Dewey, *The School and Society*, Rev. ed (Chicago, Ill: The University of Chicago press, 1915).

<sup>61</sup> While some, such as Plato, specifically articulate exactly what subjects and skills citizens should acquire, others more generally argue that understanding the foundation of the civic state allows for the meaningful participation and contribution of citizens. Plato, G. M. A. Grube, and C. D. C. Reeve, *Plato: Republic*, 2nd ed. (Hackett Publishing Company, 1992).

formal schooling, though in all cases, public schools in the United States never intended to serve all children.

The common school movement garnered steam in the 19th century, though again geographic realities altered the trajectory of implementation as different state constitutions established individual education systems. The development of United States school system in conjunction with ideologies of white supremacy also appears in histories of the common school movement.<sup>62</sup> While Carl Kaestle argues that the eventual acceptance of state common-school systems relied on the dominance of Protestant culture in conjunction with republican government and the development of capitalism, Hilary Moss explicitly intervenes in Kaestle's work to demonstrate the centrality of race in the solidification of common schools.<sup>63</sup> Goldin and Katz's *The Race Between Education and Technology* argues that the public school system grew as a result of grassroots demand

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<sup>62</sup> The common school movement grew across the country in the 19th century along with the ideals of thinkers like Horace Mann. Here intellectuals arguing for the need for more universal schooling do so with the notions of nationalism and concern about the future. Importantly, the push for legislation regarding school accompanies rhetoric of economic expansion and remains circumscribed by notions of belonging and homogeneity. Existing research on the public school system effectively demonstrates their efforts to educate in conjunction with white middle class norms. The early American education system aimed to stabilize the political system by teaching the workings of the new government and loyalty to new ideals; moreover, American education aimed to create a singular Protestant Anglo-American culture and halt the drift towards a multicultural society. Thus the main effect of the common school movement was not actually to bring education to a larger percentage of the population, but to bring education into the service of government goals. Growth and standardization of public schools driven by the common school movement meant not only that a school was attended in common, but that students received a common political and social education. The permissibility of "separate but equal" ensured the development of a tiered system that allowed for societal sentiments of racial inferiority to continue to impact the educational investment and opportunities provided to students of color. Thus, explicit inequality prevailed during a key time of investment in American education, as money to construct physical spaces, develop curriculum, publish textbooks, and train teachers further reinforced the whiteness of the American school as place. Reese, *America's Public Schools*; Kaestle, *Pillars of the Republic*; Spring, *The American School, 1642-1996*.

<sup>63</sup> Carl F Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780-1860*, 1st ed (New York: Hill and Wang, 1983); Hilary J Moss, *Schooling Citizens: The Struggle for African American Education in Antebellum America* (Chicago: University of Chicago Press, 2009).

for increased education as a prerequisite for employment in an industrial society.<sup>64</sup> This scholarship further emphasizes how schools were designed to meet the needs of an industrializing society and economy by preparing white students for success in a capitalist society.<sup>65</sup> Importantly, these arguments illuminate the educational aspect of citizenship classifications that throughout American history have been deeply intertwined with and dependent on racial classifications.<sup>66</sup>

Education historians illuminate how contemporary political rhetorics of a “broken” system imply that the school system has deviated from its initial purpose or intent. James Anderson’s *The Education of Blacks in the South, 1860-1935* opens by presenting a succinct argument demonstrating the fallacy of such logic.<sup>67</sup> Anderson, referring to the schooling of oppressed populations within the public education system, writes “both school for democratic citizenship and schooling for second-class citizenship have been basic traditions in American education.”<sup>68</sup> Anderson further demonstrates the

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<sup>64</sup> Claudia Dale Goldin, *The Race Between Education and Technology* (Cambridge, Mass: Belknap Press of Harvard University Press, 2008).

<sup>65</sup> David Tyack describes the failures of contemporary urban education not as the result of decline, but instead as the logical result of a search for a “one best system” that has ill-served American society. The current system, Tyack argues, evolved in response to increased industrialization and led to bureaucratization, reinforcing existing racial and class privileges. School reformers furthered systemized education by creating a specific kind of building, a uniform course of study, a consistent schedule, and a set of standardized exams to carefully structure the learning environment. Textbooks provided the bedrock of the curriculum, in part Tyack argues, because of inadequate teacher training. Yet the acquisition of curricular knowledge comprised only a small portion of the students’ actual learning. Students were also expected to demonstrate punctuality, regularity, attention, and silence. Other “virtues” included competition, conformity to authority, and adaptation to bureaucratic structures. Tyack demonstrates that regulation and control of the student body is a key function of the American public school system. Tyack, *The One Best System*.

<sup>66</sup> Goldberg, *The Racial State*. There is WAY more bibliography here to add about the connections between race and citizenship. Seriously a whole paragraph minimum.

<sup>67</sup> James D Anderson, *The Education of Blacks in the South, 1860-1935* (Chapel Hill: University of North Carolina Press, 1988).

<sup>68</sup> *Ibid.*, 1.

particularly racial divisions that determine which educational path a student may follow. Importantly Anderson also demonstrates that such a system did not evolve haphazardly or randomly, but rather resulted from deliberate actions derived from social ideology that subordinated black southerners. Developed in a piecemeal fashion in response to local needs, segregation offers a small glimmer of consistency in the creation of American public schools.<sup>69</sup> While prior to 1893 states could decide whether or not they wanted to fund schools for non-white children, meaning that their presence the Supreme Court's ruling in *Plessy vs. Ferguson* formalized segregation by explicitly condoning practices of racial separation. Thus during a time of key investment in the infrastructure of public schools, the key actors and participants were exclusively white. As a result norms and codes of whiteness established the very structure of the nation's school system.

The history of education in Texas evidences larger trends in the history of schools. Even focusing on a state the size of Texas insufficiently limits the project, as Texas' system of independent school districts means that change is both iterative and inconsistent. The history of schools on Texas soil begins prior to Texan independence including the Spanish Mission schools created for "civilizing and Christianizing the American Indians," and then, in theory, a municipal system of education run by the Mexican government.<sup>70</sup> Douglas Richmond explores African slavery and the role of Afro-Tejanos in Texas under Spanish colonial rule. His article, "Africa's Initial

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<sup>69</sup> Schools also developed in response to deliberate efforts to standardize. Such efforts started in Texas in 1884 in conjunction with the University of Texas – university representatives visited high schools to determine if the standards were acceptable to the university. In 1917, the legislature made the State Department of Education responsible for this work., though the focus remained on high schools. In 1926, state education officials developed a scorecard to be used to aid school standardization. This process is described in Day, "The History of Standardization in Texas Public Schools."

<sup>70</sup> "An Overview of the History of Public Education in Texas," December 2, 2010, <http://www.tea.state.tx.us/index4.aspx?id=148>.

Encounter with Texas: The Significance of Afro-Tejanos in Colonial Tejas, 1528-1821," draws attention to the lengthy history of tripartite—black, white, and latino—racial relations and the importance of specificity in the understanding the construction of race in the state of Texas.<sup>71</sup> Richmond's research demonstrates rapid change in racial categories along with gradually improved treatment for Afro-Tejanos, prior to a rapid decline in conditions under Texan independence.

Under the 1824 Federal Constitution of the United States of Mexico, the Constitution of the State of Coahuila and Texas contained a section devoted to public education, theoretically establishing primary schools for the teaching of "reading, writing, arithmetic, the catechism of the Christian religion, a brief and simple explanation of this constitution, and that of the republic, the rights and duties of man in society, and whatever else may conduce the better education of youth." This description articulates key investments of the United States of Mexico—not only shall citizens understand basic reading, writing and arithmetic, but the religion and constitution of the state. Yet these declarations regarding education's theoretical importance did not lead to its practical implementation. The failure to actually establish said schools provided fodder for arguments supporting Texan independence. While the Declaration of the People of Texas primarily addresses the larger problems facing the Mexican state while arguing for natural rights, the 1836 Texas Declaration of Independence specifically mentions the school system.<sup>72</sup>

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<sup>71</sup> Douglas. W. Richmond, "Africa's Initial Encounter with Texas: The Significance of Afro-Tejanos in Colonial Tejas, 1528-1821," *Bulletin of Latin American Research* 26, no. 2 (April 1, 2007): 200–221, doi:10.2307/27733919.

<sup>72</sup> Texas (Provisional government, 1835), *Declaration of the People of Texas, in General Convention Assembled* ([San Felipe de Austin, Tex: Printed by Baker and Bordens], 1835); "The Constitution of the Republic of Texas (1836) -- Declaration of Rights," accessed October 24, 2011, <http://tarlton.law.utexas.edu/constitutions/text/ccRights.html>; Rosa Williams, *Reproduction of the Texas Declaration of Independence* (Brenham, Tex: R. Williams, 1936).

[The Mexican state] has failed to establish any public system of education, although possessed of almost boundless resources, (the public domain,) and although it is an axiom in political science, that unless a people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self-government.<sup>73</sup>

Here the need for schools authorizes the creation of the Republic of Texas.

Yet again, declarations and theories alone proved insufficient to actually develop a functioning system. After independence, despite this proclamation, the 1836 Constitution of the Republic of Texas failed to establish any provisions for education.<sup>74</sup> During this brief period of independent nationhood, visions of education undergirded state theory, yet little more than private educational institutions succeeded.<sup>75</sup> Furthermore, this 1836 constitution ensures that rights of “persons” excludes Africans, the descendants of Africans, and Indians, ensuring that the “People of Texas” comprises a particular homogenous, white, population.<sup>76</sup> Leaving behind independent nationhood for statehood in 1845, Texas still perpetuated the same claim leveled against Mexico, failing to establish a public system of education despite the state’s new commitment to education.<sup>77</sup> In the 1845 Constitution article focused on education, four sections establish

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<sup>73</sup> Ernesto Chávez, *The U.S. War with Mexico: A Brief History with Documents*, The Bedford Series in History and Culture (New York City, NY: Bedford/St. Martins, 2007).

<sup>74</sup> “The Constitution of the Republic of Texas (1836) -- Declaration of Rights.”

<sup>75</sup> Willie Madora Long’s 1952 thesis offers a comprehensive history of education in Austin and to a large extent Texas in general. Long notes that the first education bill in the Republic of Texas pass January 26, 1839, providing the surveying of land for schools. He notes, “This bill failed to set up machinery for the establishment of public schools and was a great disappointment to friends of education.” Madora concurs however that, despite a lack of complete records, the first schools involved private teachers and tuition paid by parents. Willie Madora Long, “Education in Austin before the Public Schools” (1952).

<sup>76</sup> From Sec 10. Of the Constitution of the Republic of Texas (1836) General Provisions, [http://tarlton.law.utexas.edu/constitutions/texas1836/general\\_provisions](http://tarlton.law.utexas.edu/constitutions/texas1836/general_provisions)

<sup>77</sup> “An Overview of the History of Public Education in Texas,” 18. Also at this time, following Texas’ annexation to the United States and the end of the Mexican American War in 1848, scholars note an increase in the hostility toward Mexican Americans. Guadalupe San Miguel Jr. writes “For the native population remaining in the conquered areas which were now part of the United States, it signified the beginning of a new social reality. Despised for being Mexican and suspected of harboring disloyal



the theoretical importance of schools and outline their financial underpinnings. Section 1 reiterates claims heard in earlier documents of governance asserting the essential importance of knowledge for the “preservation of rights and liberties,” while Section 2 establishes property tax as method for funding the free schools.<sup>78</sup> The entry into the United States ensured Texas’ inclusion in practices of categorizing and counting both race and mental ability, processes requires constant reinscription and reevaluation. Harriet Washington writes, “One of the delicious paradoxes of quantum physics is the Heisenberg uncertainty principle, which warns that the very act of measurement changes the entity being measured, destroying the accuracy of the data.”<sup>79</sup> Washington also describes the methodological clumsiness of measurement, which distorted the image of African Americans for decades. The sixth U.S. Census, 1840, which counted whites as well as free and enslaved blacks, also marked the first time the census attempted to count the “insane and idiots.”<sup>80</sup> Discourses on the perceived fitness for citizenry grounded in eugenicist thinking contribute to the attempted exclusion, institutionalized segregation, and disenfranchisement of students by both race and ability within the public school systems.

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sentiments, this population was systematically deprived of whatever political and economic resources it had. The effort to relegate it to a subordinate position in the developing social order was effective and accomplished within three decades.” From Guadalupe San Miguel, “Let All of Them Take Heed”: Mexican Americans and the Campaign for Educational Equality in Texas, 1910-1981, 1st Texas A&M University Press ed (College Station: Texas A&M University Press, 2001), p. 3-4.

<sup>78</sup> “Constitution of the State of Texas (1845) -- Article X,” accessed October 24, 2011, <http://tarlton.law.utexas.edu/constitutions/text/DART10.html>.

<sup>79</sup> Harriet A. Washington, *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present*, 1st ed (New York: Doubleday, 2006). 153.

<sup>80</sup> Ibid. 145.

In 1854 the legislature passed the Common School Law establishing the first state public school system in Texas by using money from the United States paid in exchange for land to create the first fund for schools. An excerpt from a 1912 Texas history textbook appears on the following page describing this attempt at creating a school system and that effort's subsequent failure in 1854.<sup>81</sup> Only two years later, in 1856, the Texas Legislature passed the first English language law, which was expanded another two years later to make English the language of instruction in public schools.<sup>82</sup> Here the school system again codifies the importance of language in belonging. These per capita payments lasted only a short while before Texas voted to secede from the Union in 1861. The textbook mentioned above concludes this section noting, "A few years later the Civil War broke out, and during the war nearly all the schools were closed."<sup>83</sup> Texas' decision to secede along with the confederacy demonstrates the extent to which the state of Texas believed in the non-personhood of people of color and the continued importance of slavery to the social and economic importance of the state. This 1861 constitution included changes related to secession, but also maintained Article X regarding education.<sup>84</sup> Such continuity makes perfect sense given that those political actors who first participated in and presided over Texas' entry into the union were those same individuals who supported siding with the confederacy.

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<sup>81</sup> Eugene C. Barker, *A School History of Texas*, (Chicago :, [c1912]), <http://hdl.handle.net/2027/loc.ark:/13960/t1vd7421n>.

<sup>82</sup> Guadalupe San Miguel, *"Let All of Them Take Heed": Mexican Americans and the Campaign for Educational Equality in Texas, 1910-1981*, 1st Texas A&M University Press ed (College Station: Texas A&M University Press, 2001).

<sup>83</sup> Barker, *A School History of Texas*,.

<sup>84</sup> "Constitution of the State of Texas (1861)," accessed November 1, 2011, <http://tarlton.law.utexas.edu/constitutions/text/1861index.html>; "Journal of the Secession Convention, 1861 - Table of Contents," accessed November 1, 2011, <http://tarlton.law.utexas.edu/constitutions/pdf/pdf1861/index1861.html>.

The conclusion of the Civil War and the elimination of slavery did not bring the elimination of white supremacy.<sup>85</sup> The 1866 Reconstruction Constitution that marked Texas' reentry into the union expanded the scope of educational legislation and notably mandated the collection of taxes particularly for schooling "persons of African descent."<sup>86</sup> W. E. B. DuBois, writing on the public schools in *Black Reconstruction in America 1860-1880*, writes, "The first great mass movement for public education at the expense of the state, in the South, came from Negroes. Many leaders before the war had advocated general education, but few had been listened to."<sup>87</sup> DuBois further describes the history of schools up until this point, a narrative that also applies to Texas. DuBois writes, "Schools for indigents and paupers were supported here and there, and more or less spasmodically. Some states had elaborate plans, but they were not carried out. Public education for all at public expense was, in the South, a Negro idea."<sup>88</sup>

Section 7 of the 1866 Constitution establishes school generally and specifically calls our structures for black children:

The Legislature may provide for the levying of a tax for educational purposes; provided, the taxes levied shall be distributed from year to year, as the same may be collected; and provided, that all the sums arising from said tax which may be collected from Africans, or persons of African descent, shall be exclusively appropriated for the maintenance of a system of public schools for Africans and

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<sup>85</sup> For an account of the creation of private schools for black students in Houston after the Civil War see the section "The Beginning of Education for Negroes" in Katherine Keller, "A History of Public Education in Houston, Texas" (1930).

<sup>86</sup> "Constitution of the State of Texas (1866)," accessed November 1, 2011, <http://tarlton.law.utexas.edu/constitutions/text/1866index.html>.

<sup>87</sup> W. E. Burghardt Du Bois, *Black Reconstruction in America, 1860-1880*, 1964, 638, [http://gateway.proquest.com/openurl?ctx\\_ver=Z39.88-2003&xri:pqil:res\\_ver=0.2&res\\_id=xri:ilcs-us&rft\\_id=xri:ilcs:rec:abell:R00988892](http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&xri:pqil:res_ver=0.2&res_id=xri:ilcs-us&rft_id=xri:ilcs:rec:abell:R00988892).

<sup>88</sup> Du Bois, *Black Reconstruction in America, 1860-1880*.

their children; and it shall be the duty of the Legislature to encourage schools among these people.

Overall this constitution's version of Article X contained eleven sections, a decided increase from previous incarnations.<sup>89</sup> This substantive increase in the state's role in schooling, for black and white students, demonstrates an important part of the Reconstruction agenda. Despite the change, planters vehemently opposed the Freedmen's educational movement. James D. Anderson writes, "The planters reacted decisively to the Freedmen's educational movement; they were opposed to black education in particular and showed substantial resistance to the very idea of public schooling for the laboring classes."<sup>90</sup> The Freedmen's Bureau school superintendent for northern Texas in 1869 discovered that "many of the planters will not allow colored children on their places to go to school at all even when we have started those which are convenient."<sup>91</sup> The planters saw black education as a threat to their system that depended both on racially qualified forms of labor exploitation and heavy use of child labor.<sup>92</sup> Planters responded to that threat with violence. Historian Peter Irons describes incidents facing white workers at African American schools.

Captain James McCleery, the Freedmen's Bureau superintendent of education in Texas and northwestern Louisiana, barely escaped a band of night riders in Louisiana by hiding in a swamp all night. One of his teachers in Henderson

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<sup>89</sup> "Journal of the Constitutional Convention, 1866 - Table of Contents," accessed November 1, 2011, <http://tarlton.law.utexas.edu/constitutions/pdf/pdf1866/index1866.html>.

<sup>90</sup> Anderson, *The Education of Blacks in the South, 1860-1935*, 22.

<sup>91</sup> *Ibid.*, 23.

<sup>92</sup> Black citizens efforts to secure education required and received additional effort. Anderson also tells the story of Jones County where is substantial black community worked together for over 300 days to construct a school building with minimal aid from public school authorities. The black community succeeded in building a schoolhouse worth \$10,000. Other black communities in Texas took similar measures when informed there was no money for building schools.

County, Texas, was grabbed by a white mob, stripped naked, covered with tar and cotton, and given two minutes to run before he faced a volley of rifle fire.<sup>93</sup>

Also in 1866, black schools were burned and pillaged throughout the South, with three schools burned in Texas.<sup>94</sup> Irons remarks, “What is remarkable about the Reconstruction period is not that so few black children got so little good education, but that teachers and students alike persevered in the face of such enormous odds.”<sup>95</sup>

The violent battle to end to the advances made for the education of black students during reconstruction also had political dimensions. The constitution of 1869 moved “Public Schools” to Article IX and shrunk the sections on education while evidencing the forthcoming collapse of reconstruction.<sup>96</sup> The re-write swaps the term “inhabitants” for the word “citizens” and removes any mention of African Americans, while maintaining a focus on administrative aspects of schooling, like age.<sup>97</sup> A year later, The School Law of 1870 again strengthens the prescription of English only in schools, further contributing to the defining the schools as white Anglo.<sup>98</sup> Finally, Reconstruction’s end prompts a shift in political power back to the white politicians present prior to reconstruction. Back in power, these Texas representatives led the drafting of yet another state constitution, one focused on reversing the measures imposed during the Reconstruction. Democrats desire to eliminate the previous radical constitution drove the convention that met in Austin

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<sup>93</sup> Peter H Irons, *Jim Crow’s Children: The Broken Promise of the Brown Decision* (New York, N.Y: Viking, 2002). 9.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> “Constitution of the State of Texas (1869),” accessed November 1, 2011, <http://tarlton.law.utexas.edu/constitutions/text/1869index.html>.

<sup>97</sup> “Journal of the Constitutional Convention, 1868 - Table of Contents,” accessed November 1, 2011, <http://tarlton.law.utexas.edu/constitutions/pdf/pdf1868recon-1/>.

<sup>98</sup> San Miguel, *Let All of Them Take Heed*. p. 7.

from early September to late November 1875, a convention that adopted the 1876 Constitution with a lopsided vote of fifty-three to eleven. Of those present at the convention, not a single member took part in the previous Constitutional Convention of 1868-69, though eight had been involved in the Secession Convention of 1861. This constitution, which remains the foundational constitution for the contemporary state of Texas, represents a strong reversion to an earlier version and vision and a deliberate continuation and reassertion of white supremacy in the face of challenge.

During the drafting of the 1876 Constitution debates regarding the state's foray into expanding education for students of all races bolstered opposition to strengthening the institution of schools. Randolph Campbell notes that public schools following the end of Reconstruction further drew public opposition both for increasing taxes and for educating blacks as well as whites.<sup>99</sup> Patrick Williams demonstrates how prevailing business ideologies led to limiting the state's involvement in education.<sup>100</sup> Williams argues that the inclusion of a cap limiting the portions of state revenues for schools and the elimination of local school taxes, outside of voluntary town and city action, represent not a factional victory but a broader consensus of those present at the constitutional convention—primarily white southern male Democrats with substantial business interests. Williams's analysis of primary documents related to the constitutional convention in fact demonstrates that this extremely limited purview of the public schools was a substantial compromise given key delegates who fundamentally questioned the legitimacy of any expenditures for public education.

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<sup>99</sup> Randolph B. Campbell, *Gone to Texas: A History of the Lone Star State* (New York: Oxford University Press, 2003). 281.

<sup>100</sup> Patrick G. Williams, "Of Rutabagas and Redeemers: Rethinking the Texas Constitution of 1876," *The Southwestern Historical Quarterly* 106, no. 2 (October 1, 2002): 230–53, doi:10.2307/30240343.

In addition to the financial limits on the system, this constitution removes the details about age and compulsory attendance, and in Article VII, Section 7, clearly mandates segregated schools, reading, and “Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.” Despite this provision, in his research on schooling during Reconstruction, James Anderson details Texas’ planters’ resistance to allowing ex-slaves to attend school; “The planters, with few exceptions, viewed black education as a distinct threat to the racially qualified form of labor exploitation upon which their agrarian order depended.”<sup>101</sup> Such resistance further meant the complete absence of schools for black students, as Anderson notes that among others Jones County, Texas had no public schools for black students prior to the construction of a Rosenwald school in the early 1920s.<sup>102</sup>

Departures from the Reconstruction Constitution are noticeable throughout the 1876 Constitutions. Notions of social hierarchy define the requirements for suffrage, and these parameters for belonging are outlined in Article VI:

SECTION 1. The following classes of persons shall not be allowed to vote in this state, to-wit:

First-Persons under twenty-one years of age.

Second-Idiots and lunatics.

Third-All paupers supported by any county.

Fourth-All persons convicted of any felony, subject to such exceptions as the legislature may make.

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<sup>101</sup> Anderson, *The Education of Blacks in the South, 1860-1935*. p. 23.

<sup>102</sup> Ibid. p. 170. With this, as discussed earlier in this project, Anderson demonstrates how Jones County, Wood County, and other rural Texas districts thus required additional financial and personal investment to finance black education that remained wholly unfinanced by tax revenue. Anderson’s research also shows that despite these limitations, Texas’ 30 black high schools represented nearly three times the any other southern state, p. 199.

Here each of these categories precludes access to the full benefits of citizenship.<sup>103</sup> Excluding the first group for their youth, and presumed insufficient socialization into the ways of the state, the second and third groups for their lack of medical fitness and the fourth for explicit penalization, the state clearly defines which members are unfit for political inclusion.<sup>104</sup> The classification of idiots and lunatics in this section both demonstrates their categorical validity—the terms’ inclusion in the Constitution indicates that their meaning is readily understood in social practice—and the clear exclusion of disability from the full rights of citizenship. Limiting the participation and rights of those persons convicted of a felony explicitly legitimizes punishment as a tool for adjudicating social fitness, another tool with racists and racialized applications. Understanding these fundamental categories of people excluded from the body politic helps illuminate the constitutional stance on education, demonstrating an initial definition of belonging and inclusion in the state.

Article VII articulates the purpose and necessity of schooling in the state. Section 1 reads similarly to earlier incarnations: “A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”<sup>105</sup> Those who have full access to participation in the citizenry, which means only those not specifically excluded in

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<sup>103</sup> Loïc Wacquant argues that a lack of fitness for the inclusion in the body politic can be seen as pieces of socialization, medicalization, and penalization, a helpful framed for understanding the groups denied participation in the political process as articulated here in the constitution. Loïc J. D Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity*, English language ed (Durham [NC]: Duke University Press, 2009).

<sup>104</sup> The medicalization of poverty requires further attention in general – I didn’t get to it in this project.

<sup>105</sup> “The Constitution of the State of Texas (1876),” 18766, accessed October 28, 2011, <http://tarlton.law.utexas.edu/constitutions/text/1876index.html>.



Section 1 or by racial exclusion, comprise this group of “people.” The implementation of the actual school system contains less detail in this constitution. Schools opened around the state shortly on varied timelines afterward.<sup>106</sup> While new public schools continued to open, older public and private schools did not necessarily close down immediately following the change.<sup>107</sup> However, new schools and districts formed in accordance with the updated political structure, and separate public schools for white and black students began appearing in 1877.<sup>108</sup>

By 1900, African-American schools existed across the state. The African-American paper, the *Dallas Express*, describes the activities of African American schools across the state. In 1900<sup>109</sup> A note from Athens, Texas on January 12 reads, “the public school is crowded as never was before.” A note from Grandview, Texas on the same date reads, “Our public school opened.” From Bonham, Texas “250 pupils are too much for any three teachers.” This same note indicated that “nearly one hundred colored people read the white paper here and they see nothing but ‘Jack (colored) was arrested, fined, beat up’ or such news. Why not read also a paper that tells nothing but the real good done

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<sup>106</sup> This project focuses only on public schools, though the creation of private and parochial schools for both Mexican American and African American students by and for their communities evidences the importance both communities place on education. San Miguel describes early Tejano schools in *Let All of Them Take Heed*. p. 9-10.

<sup>107</sup> In his account of education in Austin before the development of public schools Willie Long writes that the “colored schools” continued, though records are also spotty. Noting that the colored population owned a public building in 1873, Long writes “the school no doubt was continued, with or without public funds.” “Free public schools for public children” opened in fall 1877. A newspaper article from the time evidenced other such schools in existence, as one published on August 12, 1880 notes, “The colored population of our city conduct nearly as many school communities as are under control of the whites.” In Willie Madora Long, “Education in Austin before the Public Schools” (1952).

<sup>108</sup> Houston public schools opened under city control on the first of October 1877 and, following the language of the constitution, “separate schools were provided for white and negro children.” In Katherine Keller, “A History of Public Education in Houston, Texas” (1930).

<sup>109</sup> “Dallas Express,” January 13, 1900.

by the Negro?” Honey Grove, Texas lists an enrollment of 159 students, noting that they added a third teacher that week. A note from Lampasas, Texas, reads “Parent, send your children to school.” In Ferris, Texas “the public school is somewhat late opening. Parents, get you children ready for school Monday, Jan. 14th.” Elmo, Texas, notes that the enrollment of the Fairview schools is 103. The note from Abilene reads, “The school children’s social last Saturday evening was the best ever known in Abilene.” Other locations mentioning schools included Brushy Creek, Canton, and San Antonio.

This 1876 constitution still comprises the bedrock of political governance in the state of Texas and education’s role as a function of the state solidifies in the following years. At the start of the twentieth century prominent figures in Texas history continue to reify the importance of education. E. V. White’s 1914 survey of rural schools across Texas states its mission as improving the school system. In doing so White quotes both Sam Houston and Mirabeau B. Lamar regarding the importance of education in Texas.<sup>110</sup> Houston asserts, “The benefits of education and of useful knowledge, generally diffused through a community, are essential to the preservation of a free government,” while Lamar argues the, “Cultivated mind is the guardian genius of democracy. It is the only dictator that freemen acknowledge and the only security that freemen desire.”<sup>111</sup> Both Houston and Lamar’s statements link freedom to education and education to full participation in citizenship. This same study explicitly frames education’s importance in Texas’ society:

The education of all the children of all the people is now generally conceded to be one of the most important functions of the state. A perfect democracy would

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<sup>110</sup> E. V. White, *A Study of Rural Schools in Texas*, (Austin, 1914), <http://hdl.handle.net/2027/loc.ark:/13960/t16m3vt87>.

<sup>111</sup> Ibid.

provide for the education of every citizen. It does not follow, however, that all citizens must have the same kind of education; but each person should receive that training which will contribute most to his own happiness and which will make him a useful factor in human society.<sup>112</sup>

This idea of differentiated education alludes to an innate or inheritable point of education, further demonstrating how educational differentiation by perceived ability and economic utility undergirds schools in the state. In today's contemporary school-to-prison pipeline, students of color and students with disabilities lack of educational opportunity can further be understood both a result of a lack of perceived ability and economic value. This deliberate debilitation is hardly new and requires excavating the origins of education in the state to understand the present system. The next section looks at the formalization of adolescence and the application of eugenic science in calls to expand state services.

#### **ADOLESCENCE AND ABILITY**

The historiography of adolescence holds that three interrelated sets of legal categories, which emerged as white upper and middle class phenomena and became “democratized” by the twentieth century's legislative reforms, created this temporally signified category: compulsory attendance, child labor, and juvenile justice.<sup>113</sup> Categories of youth and adolescence are fundamentally temporally bound not only because of the temporary nature of being young, but because concerns about youth are concerns about the future.<sup>114</sup> Historians and youth studies scholars demonstrate the overlap between

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<sup>112</sup> Ibid.

<sup>113</sup> William S Bush, *Who Gets a Childhood?: Race and Juvenile Justice in Twentieth-Century Texas*, Politics and Culture in the Twentieth-Century South (Athens: University of Georgia Press, 2010); David Bakan, “Adolescence in America: From Idea to Social Fact,” *Daedalus* 100, no. 4 (Fall 1971): 979–95, doi:10.2307/20024043.

<sup>114</sup> *States of Emergency: The Object of American Studies* (Chapel Hill: University of North Carolina Press, 2009). In the introduction to *States of Emergency* Russ Castronovo calls for a potential shift in the field of American Studies as “old” units, such as the nation, remain of relevance, while comparative spaces, such as

many of the students now being impacted by the school-to-prison pipeline and youth who have historically been denied access to contemporary categories of childhood.<sup>115</sup> Adolescence, like race, gender and sexuality, cannot be conceived apart from its social and historical context and each social structure emerged from a white middle class conception of normal acceptable behavior around the turn of the twentieth century highlighting how mutually reinforcing systems of power including race, class, gender, sexuality, ethnicity, and age, among others, dominate our society. As a result, adolescence's origins remain firmly ensconced in white middle class conceptions of normal, acceptable behavior.<sup>116</sup> A wide variety of education scholars have demonstrated the white middle class norms of both a segregated school system and the category of youth itself, and William Bush offers a glimpse of how historical patterns related to the construction of adolescence serve as antecedents to the debilitation in the contemporary

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oceans or borders, and times, such as nostalgia or amnesia, change the intellectual landscape. Castronovo and Gillman's collection also includes a methodological essay by Srinivas Aravamudan calling for the deployment of "rogue studies." Aravamudan grounds his call to American Studies in the centrality of the relationship between the nation state and discipline for the field. "A responsible scholarly procedure would map the internal dynamics of the discipline and measure the long arm of the state through various temporal moments of knowledge production, eventually producing a diachronic account of the development of American studies." Both of these calls evidence an opportunity for a project like this one to more completely grapple with time and temporality.

<sup>115</sup> Another key scholar not mentioned here, Nancy Lesko, demonstrates how conceptions regarding youth operate in education, law, psychology, and popular culture and argues that these debates provide a way to talk and strategize concerns over racial progress, male dominance, and national power. Nancy Lesko, *Act Your Age!: A Cultural Construction of Adolescence* (New York: Routledge/Falmer, 2001).

<sup>116</sup> Schooling serves as one of an interlocking set of technologies that posit adolescence as a social-temporal space that works to ensure the smooth reproduction of existing societal relations. Since, as Lawrence Grossberg argues, youth has no structure and permanence of its own and must be defined in terms of reading the future, adults' surveillance and regulation of adolescents reflect particular fears, anxieties, and wishes for the future. Quoted in Charles R Acland, *Youth, Murder, Spectacle: The Cultural Politics of "Youth in Crisis"* (Boulder, Colo: Westview Press, 1995).

school-to-prison pipeline through the disproportionate penalization of students of color.<sup>117</sup>

Some legislation pertaining to educational decisions appears shortly after the 1876 constitution, including the creation and regulation of compulsory attendance. Another key piece of legislation around the same time outlines the creation of a State Board of Education, demonstrating how legislators further conceived of the need for a centralized administrative structure to oversee the varied system.<sup>118</sup> This level of oversight demonstrates the legislature's drive for centralized bureaucratic structure. Compulsory attendance and centralized oversight providing some of the building blocks for increased growth of the school system, but importantly the story of the growth of the school cannot be separated from larger trends in the state and nation.

Following national trends, the Texas legislature solidified the category of adolescence through the formalization of compulsory education, child labor legislation, and special legal procedures for juveniles. In 1889, women reformers with the Texas chapter of the Women's Christian Temperance Union succeeded in opening a statewide reformatory for boys, Gatesville, making Texas the first Southern state to do so.<sup>119</sup> However, in practice, the school functioned as a convict farm for mostly black students.

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<sup>117</sup> Several scholars have recently tackled the history of juvenile justice, including Geoff Ward and William S. Bush. Bush adds to the discussion by asking the question that constitutes very title of his book *Who Gets a Childhood?: Race and Juvenile Justice in Twentieth-Century Texas*. Bush's work has substantive connections to this project as he argues that the protections of the state are uneven and that only those students in accordance with a white middle class norm receive protection from such legislation defining the category of adolescence. Bush demonstrates that students unable to be socialized into the dominant culture, because of the unwillingness of white citizens to allow it, instead find themselves subjected to penalization—in this case juvenile justice rather than schooling. Moss, *Schooling Citizens*; Nancy Lesko, *Act Your Age!: A Cultural Construction of Adolescence* (New York: Routledge/Falmer, 2001); Bush, *Who Gets a Childhood?*

<sup>118</sup> In 41st 2nd CS HB 79 Relating to the State Board of Education

<sup>119</sup> Bush, *Who Gets a Childhood?*, 5.

A guard at the school recounts daily life there at the start of the twentieth-century, noting that the fall and spring months consisted solely of manual labor and did not involve any schooling.<sup>120</sup> Even in its initial year, the student population disproportionately included black male students who constituted 46 of the initial 68 students. Once admitted strict segregation structured students' daily lives. The Texas legislature expanded procedures for juvenile punishment by specifying court procedures in 1907 in the Juvenile Delinquency Court Act. The state legislature removed Gatesville from the penitentiary system in 1909, though the change impacted only the institution's name. In 1912 Gatesville Superintendent W. H. Adams' outlawed exotic forms of corporal punishment at the school, which resulted in guards encouraging students to escape before ultimately walking off the job.<sup>121</sup> Texas lawmakers added further legislation clarifying and refining all three categories constitutive of adolescence in the next decade, as the legislature further regulates child labor in 1911, formally segregates white boys from others in juvenile justice institutions in 1913, and expands compulsory schooling legislation in 1915. The 1913 Juvenile Act reads, "The white boys shall be kept, worked and educated entirely separate from the boys of other races, and shall be kept apart in all respect."<sup>122</sup> Bush's study demonstrates that punishment was both more severe and more common for non-white students.

Along this the solidification of the categories of adolescence, Texas continued to institutionalize the public school system. In the 1915 State Board of Education also made

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<sup>120</sup> Bush, *Who Gets a Childhood?* p.11-12.

<sup>121</sup> Ibid. 14.

<sup>122</sup> Ibid. 20.

the training school and created the Independent School District (ISD).<sup>123</sup> Population growth and economic growth in Texas in the early part of the twentieth century led to the creation of more and more school districts, something evidenced and recorded by the legislative system's need to establish each independently. The structure of the constitution ensures that each school district files separately, creating an intricate balance of local and state control, where each district has the ability to specify key policies and practices relevant to their context, so long as they met the, less detailed and more limited, state policies. By 1921, the state still had both common school districts and independent districts, with a strong imbalance towards providing for white students. The following tables, from a 1921 *Report on Education in Texas and Recommendations Made to the Governor and the Thirty-Seventh Legislature*, demonstrate these disparities. Colored students as a percentage of the student population are particularly absent at the kindergarten level.<sup>124</sup>

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<sup>123</sup> This process, of creating and developing independent geographic entities, ensures that each district has its own specific history. While geographic boundaries play an essential role in this story, as discussed in conjunction with Christine Drennon's work, such boundaries also present a specific limitation of this work. The separateness of each district means that discerning trends or generalizing about students' lived experience is challenging, ill advised, and much needed.

<sup>124</sup> *Report on Education in Texas and Recommendations Made to the Governor and the Thirty-Seventh Legislature*,. Both tables are reproduced from page 51 of this report.

NUMBER OF ELEMENTARY SCHOOLS AND HIGH SCHOOLS			
	Elementary	High Schools	Total
Common school districts.....	7,215	2,169	9,384
Independent districts .....	1,186	452	1,638
Total in state.....	8,401	2,621	11,022

PUPILS ACTUALLY ENROLLED

*Common School Districts*

	White	Colored	Total
Kindergarten .....	1,569	443	2,012
Elementary grades .....	418,480	107,214	525,694
High school .....	30,616	1,288	31,904
Total .....	450,665	108,945	559,610

*Independent Districts*

	White	Colored	Total
Kindergarten .....	5,567	449	6,016
Elementary grades .....	332,211	61,936	394,147
High school .....	71,680	4,195	75,875
Total .....	409,458	66,580	476,038

*Total—Independent and Common School Districts*

	White	Colored	Total
Kindergarten .....	7,136	892	8,028
Elementary grades .....	750,691	169,150	919,841
High school .....	102,296	5,483	107,779
Total for state.....	860,123	175,525	1,035,648

Figure 1: Table from 1921 report showing pupils and school districts

These statistics further demonstrate the extent to which economic investment in facilities favored white students. The table shows that that the colored schools were disproportionately not owned by the public, requiring a likely greater financial burden on families attending and a lack of investment in communities with those schools.



## REPORT AS TO NUMBER OF BUILDINGS USED FOR PUBLIC SCHOOLS

### NUMBER OF SCHOOLHOUSES OWNED BY PUBLIC

	White	Colored	Total
Common school districts.....	7,803	1,052	8,855
Independent districts .....	1,469	420	1,889
	<hr/>	<hr/>	<hr/>
Total of schoolhouses....	9,272	1,072	10,344

### NUMBER OF SCHOOL BUILDINGS NOT OWNED BY PUBLIC—RENTED OR OTHERWISE

	White	Colored	Total
Common school districts.....	336	254	590
Independent districts .....	86	102	188
	<hr/>	<hr/>	<hr/>
Total .....	422	356	778

### NUMBER OF SCHOOLHOUSES BUILT DURING YEAR OF 1919-20

	White	Colored	Total
Common school districts.....	435	75	510
Independent districts .....	85	19	104
	<hr/>	<hr/>	<hr/>
Total of schoolhouses....	9,694	1,428	11,122

Figure 2: Table from 1921 report showing number of school buildings and ownership

As school districts increased in abundance, reformers also succeeded in opening more facilities for juvenile justice. The continued, if often implicit, overlap between categories of race and disability here further demonstrate the extent to which punishment routes out those deemed abnormal. In one 1920 study of a state reformatory for boys in Texas, the author, Dr. Kelley, found that 20 percent should be classified as “definitely feeble-minded.” Additionally, Dr. Kelley added that “probably at least fifty percent of delinquents are totally incapable of being taught to look after themselves in an

environment as unfavorable as the one from which they came.”<sup>125</sup> 1917 the legislature passed provisions for a “State Training School for Negro Boys,” but failed to appropriate any funds. Bill Bush writes, “The measure confused one county judge, who in July 1923 case sentenced a black teenager named George Brown to spend a year in the nonexistent Jim Crow training school.”<sup>126</sup> This lack of provision for segregated faculties for black youth created further tensions as Della McDonald, the Gatesville school principal, complained to the legislature that Gatesville lacked provisions for black school and black students “were never supposed to be placed” there.<sup>127</sup> Despite this, black students continued to be disproportionately funneled into juvenile justice institutions. A 1923 federal census found “half of all black delinquents were placed in prisonlike settings (prisons, jails, workhouses, or reformatories,) compared to only about a fifth of their white counterparts.”<sup>128</sup> Bush writes:

The roots of such disparities ran back to slavery and shaped the thinking of the child savers who created juvenile justice and corrections. Put simply, white reformers did not include black children in the emerging idea of modern childhood, and unequal treatment largely persisted despite the strenuous efforts of African American reformers.<sup>129</sup>

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<sup>125</sup> Leta Stetter Hollingworth, *The Psychology of Subnormal Children*, (New York :, 1920), <http://hdl.handle.net/2027/uc2.ark:/13960/t5z60fr05>. 31.

<sup>126</sup> Bush, *Who Gets a Childhood?* 21.

<sup>127</sup> *Ibid.* 21.

<sup>128</sup> *Ibid.* 20.

<sup>129</sup> *Ibid.* 20. Ward’s *The Black Child Savers* also makes several key contributions to the field, but in particular adds a clear reading of the history that demonstrating that “low rates of black youth confinement were rooted in this racial regime of Jim Crow segregation and its denial of black youth and community access to liberal rehabilitative ideals.” Ward himself builds on Anthony Platt’s 1969 *The Child-Savers: The Invention of Delinquency* whose discussion of race, relegated to an appendix, itself demonstrates that “historical protection of youths through law appears to have been reserved for white youths.” Ward’s *black child savers* then provides an uplifting tale about their working through substantive barriers. “The unheralded black child-savers tell an inspiring American story about the often stark but unstable and penetrable boundaries of race, citizenship, and democracy. Although they did redefine the radical politics of juvenile justice, their movement generally failed to achieve its goal of institutionalizing racial justices in

Going further into the African American reformers efforts, Geoff Ward notes the radical activism of “black child savers,” while also noting their inability to institutionalize racial justice: “Jim Crow juvenile justice was organized to maintain white democracy and second-class black citizenship, while the black child-saving movement imagined an alternative structure of juvenile justice that could institutionalize progress toward a new multiracial and ethnic democracy.” Instead the creation of a juvenile justice system both further formalized racial injustice, creating an alternative societal placement for youth determined to be deviant. The labeling and sorting of children into the juvenile allows for the system’s simultaneous transformation and stasis in response to forthcoming challenge and critique regarding both race and ability.

Punishment in the regular ISD setting continued to involve corporal punishment. Opposition to corporal punishment began along with the start of public schools as common school proponents steered education away from the dominance of religious education. Lyman Cobb 1847 work on the “evil tendencies” or corporal punishment lists and expands upon thirty separate objections to the practice including, “Parents and teachers often inflict corporal punishment without any regard to the *rights* of the children, thus punished.”<sup>130</sup> Horace Mann sought to root out corporal punishment in schools.<sup>131</sup> Yet these sorts of studies are not the first to demonstrate the racial disparities in school discipline. New Jersey became the first state to abolish the practice in 1867. Donald R. Raichle’s “The Abolition of Corporal Punishment in New Jersey Schools,” argues that

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the administration of liberal rehabilitative ideals.” Geoff K. Ward, *The Black Child-Savers* (University of Chicago Press, 2012).

<sup>130</sup> Lyman Cobb, *The Evil Tendencies of Corporal Punishment: As a Means of Moral Discipline in Families and Schools, Examined and Discussed* (New York: M.H. Newman, 1847).

<sup>131</sup> Barbara Finkelstein, “Perfecting Childhood: Horace Mann and the Origins of Public Education in the United States,” *Biography* 13, no. 1 (1990): 6–20, doi:10.1353/bio.2010.0400.

the feminization of the teaching profession, the erosion of orthodox Calvinism, the legacy of Republican ideology, and the enlightenment thought led to widespread critique of corporal punishment.<sup>132</sup> Intellectuals initially opposed to corporal punishment included, among other intellectuals, Horace Mann. Mann once reported seeing “328 floggings in one school during the course of a week.”<sup>133</sup> Texas embraced the practice in its early history. Randolph B. Campbell, describing discipline in antebellum Texas schools, writes, “One Harrison County School hired a teacher on the basis of his reputation for quote ‘thrashing’ boys large and small.”<sup>134</sup> This combination of physical punishment in schools and the establishment of separate institutions establish the racial disparities at the foundation of the education system. William Bush further notes that the public and political support for such rehabilitative treatment of juvenile offenders quickly waned. By 1920 the legislature established a new government body, the Texas Board of Control, to oversee all the state’s “eleemosynary” institutions. These “institutions for dependent

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<sup>132</sup> Myra C. Glenn, “Corporal Punishment: The Need for a Historical Perspective,” *History of Education Quarterly* 23, no. 1 (April 1, 1983): 91–97, doi:10.2307/367973; D R Raichle, “The Abolition of Corporal Punishment in New Jersey Schools,” *History of Childhood Quarterly* 2, no. 1 (1974): 53; Crisler Ransom B., “Administrative Aspects of Discipline in Texas Public Schools” (Ph.D., The University of Texas at Austin, 1947), <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/301830688?pq-origsite=summon>. Ransom’s 1947 dissertation entitled “Administrative Aspects of Discipline in the Texas Public Schools” classifies the evolution of United States public school discipline into four categories, each characterized by shifting attitudes towards corporal punishment. The first, during colonial times, which Ransom labels the “Dominance of the Religious and Authoritarian Concepts in Discipline, 1607-1776,” rests on Calvinist beliefs in original sin and the predominance of religious education and involves corporal punishment as a central feature. The second, “Rise of Opposition to the Old Order, 1776-1860,” includes stories about intellectuals such as Mann. The third, “Modification of American Concepts Under the Influence of European Theory and Practice, 1860-1900,” continues the intellectual movement against corporal punishment as an appropriate means to discipline children. Ransom classifies the fourth period, “Development of a Peculiarly American Concept of Discipline, 1900-1946,” as the death of intellectual justification for corporal punishment, yet, even at the time Ransom’s writing, no states beyond New Jersey banned corporal punishment

<sup>133</sup> A. Troy Adams, “The Status of School Discipline and Violence,” *The Annals of the American Academy of Political and Social Science* 567 (2000): 140–56.

<sup>134</sup> Campbell, *Gone to Texas*.

populations” included those for “the deaf, blind, mentally ill, dependent and delinquent” populations.<sup>135</sup> The slippage here between delinquency and disability evidences the exclusionary logics both categories require to define deviance from full belonging in the citizenry. The following section examines the concurrent and convergent establishment of categories of disability and eleemosynary institutions around the state.

### **HISTORICAL DISABILITY**

Efforts to apply scientific principles and labeling to perceived shortcomings from normality led to the use of terms that infuse both popular media and professional diagnosis while morphing over time; while terms like “idiot,” “imbecile,” and “moron” have explicitly derogatory, if benign, connotations today, their previous “scientific” standing represents an important step in the terms’ acquisition of meaning, and one often hidden in contemporary discussions of disproportionate representation, as, given the scope of their analysis, much of this literature examines the current dynamics independently from a more detailed history of special education.<sup>136</sup> Practices based on eugenic science and institutionalized in the name of modern progress include the development of intellectual categories, such as the malleable “feeble-minded,” specified through the use of measurements such as I.Q.. The concurrent institutionalization of disability and schools meant initial efforts to apply terms like *idiocy* and *feeble-mindedness* involved few limitations on their meanings. Furthermore,

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<sup>135</sup> Bush, *Who Gets a Childhood?* 26.

<sup>136</sup> Snyder and Mitchell, *Cultural Locations of Disability*.

practitioners' attempts to apply them with precision reveal fundamental inconsistencies in their negotiation and meaning.<sup>137</sup>

This connection between early eugenicist theory and the solidification of public schools receives uneven attention in scholarly literature regarding special education.<sup>138</sup> For example, in his work *The History of Special Education: A Struggle for Equality in American Public Schools*, Robert Osgood explicitly mentions eugenics only once.<sup>139</sup> Osgood instead describes the increased awareness and ostracization of individuals with disabilities as a product of increasing industrialization and immigration, though he notes that suspicion and distrust of those considered disabled exists before both societal trends. Additionally, Osgood's account of the practices related to labeling and educating disabled students clearly employ eugenicist logics.

By the early 1900s, the state of being disabled generated considerable suspicion, even outright contempt, among many. Doctors, teachers, institution and school administrators, and researchers in the burgeoning field of "feeble-mindedness" or "mental deficiency" employed a variety of allegedly scientific and objective means to establish the hereditary and malevolent nature of this condition. In the early twentieth century, "mental deficiency" assumed a much more widespread and dangerous status that had been the case four of five decades earlier. After 1870, both public and private institutions for the disabled focused less on treatment, education, and cure and more on isolation, custodial care, and eradication. In addition, school systems in the larger cities began developing segregated programs for children considered disabled.<sup>140</sup>

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<sup>137</sup> Gerard Giordano, *American Special Education: A History of Early Political Advocacy* (New York: Peter Lang, 2007).

<sup>138</sup> One place where this distinction receives some attention is in contemporary practical textbooks. In one example, Michael Farrell's textbook delineates "labeling" as a theory from "stereotyping," which refers to how labeling can operate. Michael Farrell, *Investigating the Language of Special Education: Listening to Many Voices* (Basingstoke: Palgrave Macmillan, 2014).

<sup>139</sup> Robert L Osgood, *The History of Special Education: A Struggle for Equality in American Public Schools*, Growing up (Westport, Conn: Praeger, 2008). 34.

<sup>140</sup> Ibid. 8.

The intellectual work undergirding fields of “feeble-mindedness” and “mental deficiency” is the work of eugenic science. Additionally, mental categorization was and continues to be an inexact science; Osgood notes “differentiating between insanity and ‘feeble-mindedness’ during the 1800s was at best an inexact and uncertain science.”<sup>141</sup> The subjectivity of such science, based not on logical methodologies and verification by replication but on an amalgam of logic and culture, mirrors the work of scientific racism. Harriet Washington calls this “science” the “*embodiment* of ethnocentric bias,” and a critical piece of the rationale supporting enslavement.<sup>142</sup> This description also applies to disability history.

Gerald Giordano’s *American Special Education: A History of Early Political Advocacy* explicitly examines the scholarly literature and practices that shape the debate and further asserts the fluidity and expansiveness on the use of “idiocy, feeble-mindedness, and backwards.”<sup>143</sup> Gerard Giordano outlines nineteenth century appearances of such terms, citing training and classification manuals such as P. M. Duncan’s 1866 text, *A Manual for the Classification, Training, and Education of the Feeble-Minded, Imbecile, & Idiotic*, asserting that earlier scholars failure to define their meaning derives from the terms contemporary conveyance of “a meaning readily understood.”<sup>144</sup> Disagreement regarding the causes and influences of disability, as well as

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<sup>141</sup> Ibid. 37; Osgood mentions Steven A. Gelb, “‘Not Simply Bad and Incurable’: Science, Morality, and Intellectual Deficiency,” *History of Education Quarterly* 29, no. 3 (October 1, 1989): 359–79, doi:10.2307/368909; Albert Deutsch, *The Mentally Ill in America: a History of Their Care And Treatment from Colonial Times*, 2nd ed., rev. and enl (New York: Columbia University Press, 1949) as further resources.

<sup>142</sup> Washington, *Medical Apartheid*. 33.

<sup>143</sup> Osgood, *The History of Special Education*.

<sup>144</sup> P. Martin 1821-1891 Duncan, *A Manual for the Classification, Training, and Education of the Feeble-minded, Imbecile, & Idiotic*, 1866; in Giordano, *American Special Education*.

the appropriate route for care, demonstrates the spatial and temporal negotiations surrounding these terms, as the terms develop their saliency through their theorization and application.<sup>145</sup> Giordano's *American Special Education* presents a substantial number of publications on the harsh punitive measures that comprised a mainstream view of handling disability. These sources include genealogical illustrations from texts positioning disability as an imminent threat to public health, unabashedly linking moral delinquency to disability.<sup>146</sup> Education professionals at the start of the 20th century begin to adopt more progressive viewpoints, following to their European counterparts.

Reform-minded educators protested that restrictive settings were cruel and inappropriate. They also read protest about religion centered instruction. They wanted disabled students to learn academic, vocational, and life skills. They believe that they could master the skills in school based day care programs. They defended their approach as a way to promote humane care, economical services, and noninstitutionalized living.<sup>147</sup>

Within this context of harsh treatment for persons with disabilities, scholars and practitioners calls for less punitive treatment constitute a progressive stance. In particular, progressive educators opposing practices such as imprisonment instead argued for the need to provide alternative treatments.<sup>148</sup>

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<sup>145</sup> Scholars examining the historical construction of disability not only examine schools and medical record, but also cultural spaces displaying and defining disability. James Trent investigates printed materials from the 1904 World Fair references persons with disabilities, referring to them as "defectives." Unaccompanied by a definition, presumably because the authors felt the exhibit itself to provide sufficient evidence for viewers, the materials also outlined education materials for the group: eugenic interventions including institutionalization, sexual sterilization, deportation, and extermination. James W. Trent, "Defectives at the World's Fair Constructing Disability in 1904," *Remedial and Special Education* 19, no. 4 (July 1, 1998): 201–11, doi:10.1177/074193259801900403; in Giordano, *American Special Education*.

<sup>146</sup> This discussion contains a gendered component not discussed here. The textbook illustration in Giordano's text labels several women sexually immoral in addition to feeble-minded, further bolstering cries for sterilization. 27.

<sup>147</sup> Giordano, *American Special Education*. 45.

<sup>148</sup> *Ibid.* 41.



This reformist mindset led to the first special education schools established in Texas, asylums, including institutions for the “Deaf and Dumb,” several of which precede the establishment of compulsory education. The first “asylum for lunatics” was established prior to the Civil War in 1855.<sup>149</sup> The first school for the “deaf and dumb” opened with students on January 2, 1857. The school persisted despite the turmoil brought on by the war and following reconstruction, as early as 1878, the Superintendent of the school for the deaf, began to call attention to “the need of a similar institution for the education of the negro deaf and blind of the state,” alluding to the unequal and segregated care provided.<sup>150</sup> Enrollment between 1887 and 1912 only surpassed 100 pupils for one year; the program also shifted substantially in 1904 from an emphasis on literary instruction to an imperative “to make every pupil self-sustaining.”<sup>151</sup> At the end of the nineteenth century, these institutions devoted to mental and physical disabilities functioned in a primarily custodial fashion, organizing and controlling students’ lives.<sup>152</sup> These institutions represent some early forms of the state medicalization, as these asylums provide a place for the supposed protection of individuals deemed otherwise unfit to participate in citizenry.<sup>153</sup>

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<sup>149</sup> Nelson’s entire first chapter is entitled “History of the Institutions for Defectives, 1856-1883.” Chapter two is “Institution for Education of Deaf and Dumb, 1856-1883.”

<sup>150</sup> Mary McKenney Nelson, “A History of the Care of Defectives in Texas” 1926.

<sup>151</sup> Ibid. p.66. 1912 marked the beginning of domestic science, taught by a teacher trained at the Tuskegee institute.

<sup>152</sup> Osgood, *The History of Special Education*. 31.

<sup>153</sup> Early forms of the Texas Constitution provide provisions for surveying and setting apart land for a “a Lunatic Asylum, a Deaf and Dumb Asylum, a Blind Asylum, and an Orphan Asylum.” Section 9 of 1866 Texas Constitution, which also expanded and detailed the scope of education in the state of Texas

A 1912 Texas history textbook, in a chapter describing the expansion of education, adds

The state's care of the unfortunate classes. —In addition to educating the normal youth of the state, Texas makes provision for its unfortunates, who are regarded as the wards of the state. First are the orphan children, for whom a home has been established at Corsicana. Second are the blind and the deaf and dumb. For these, three schools are supported at Austin, one for the blind children, one for the deaf and dumb, and another for the negro deaf and dumb and blind. The third class embraces the Confederate veterans and the widows of Confederate soldiers, who are left without means of support. For them two homes are supported by the state at Austin, one for the men and one for the women. The fourth class are the insane. For them three asylums have been established, one at Austin, one at San Antonio, and another at Terrell. The state also maintains a colony at Abilene for the treatment of people suffering from epilepsy, and a state sanitarium for consumptives has just been located near San Angelo.<sup>154</sup>

Public school officials, questioning whether or not students with obvious disabilities had any place in public schools, ultimately found a benefit in controlling more segments of the population, theoretically as a way to increase the system's efficiency.<sup>155</sup> Prior to decline of eugenics as a social movement and the development of special education as a social structure, classifying citizens still comprised an explicit state preoccupation. Harriet Washington notes that the mental health and intelligence theories "proven," adopted and discarded throughout the nineteenth century were explicitly racialized. Washington further illustrates such theories and tests application:

They were all detailed numerical assessments that indicated the lower intelligence of blacks and they all measured a fixed attribute that could never be improved. Phrenology, for example, involved determining personality (including a propensity to violence) by interpreting the shape of the head. Intelligence was

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<sup>154</sup> Barker, *A School History of Texas*,.

<sup>155</sup> Jay G. Chambers and William T. Hartman, eds., *Special Education Policies: Their History, Implementation, and Finance* (Philadelphia: Temple University Press, 1983); Joseph L. Tropea, "Bureaucratic Order and Special Children: Urban Schools, 1890s-1940s," *History of Education Quarterly* 27, no. 1 (April 1, 1987): 29–53, doi:10.2307/368577; Osgood, *The History of Special Education*.

gauged by measuring the size of the brain, either directly or by measuring the cranial capacity of a skull. Scientists compared values for various races and each “found” the lowest intelligence in blacks. Furthermore, each detailed numeric was determined to be stasis and immutable.”<sup>156</sup>

This belief in the fixity of personality features and mental attributes supported justifications for regulating and penalizing those deemed incapable of full participation in citizenship. The lack of adequate facilities for those labeled feeble-minded across the state led to “the placing of the insane in jails and on poor farms [which] was primarily for the protection of society and secondarily a simple means of getting them out of sight.”<sup>157</sup> The following section the creation, application, and transformation of disability categories that result in the racial disparities in disability labeling and diagnosis that persist today.

#### **EDUCATION OF THE FEEBLE-MINDED AND INSANE IN TEXAS**

Clarence Yoakum’s 1914 study comprises a primary text for this chapter. Yoakum attempts to assess the current state of affairs, yet Yoakum even more clearly pursues a change: increased state support educating the feeble-minded.<sup>158</sup> Yoakum’s study begins; “we are in the bait of dividing citizens into two classes based on their value to society and their amenableness to social custom and law—desirable and undesirable citizens.”<sup>159</sup> He explains further:

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<sup>156</sup> Washington, *Medical Apartheid*. 153.

<sup>157</sup> Nelson, “A History of the Care of Defectives in Texas.” p.99.

<sup>158</sup> Clarence Stone Yoakum, *Care of the Feeble-Minded and Insane in Texas*, by C. S. Yoakum. Ph.D. (Austin, Texas, 1914), <http://hdl.handle.net/2027/nnc2.ark:/13960/t8z901b15>.

<sup>159</sup> Ibid.

The latter class comes in conflict with law and is generally considered a menace to good government. Scientific study and research today show us that this class is composed of two groups, the delinquent and criminal, or properly speaking, the undesirable citizen, the class that has ideas and performs actions that are inimical to social health; and a second group composed of the mental and moral defectives and the defective-delinquent, the socially unfit through deprivation of desirable qualities and by inheritance of undesirable ones, from defective strains, and diseases.<sup>160</sup>

Yoakum argues that criminal codes, jails, prisons, and punishment, impact only the first group, the delinquent and criminal, the “undesirable citizen.” Noting the recent inauguration of the penitentiary system of the state, Yoakum argues that no such provisions exist for the second category, the “mental and moral defectives and the defective-delinquent,” also characterizes as “socially unfit.”<sup>161</sup>

The classification and division of the second category into “mental defective” and “mentally diseased” leaves both under the larger category of “feeble-mindedness.” Yoakum cites the 1910 classification adopted by the American Association for the Study of the Feeble-Minded, printing the educational classification in his work, reproduced here on the following page. As listed, the categories differ in their perceived regard to rehabilitation, with some categories listed as trainable or improvable while others are not. Rehabilitation constitutes a central notion to the distinction between disability and debility. Yoakum again clarifies his use of the categories: “Broadly speaking, we must separate the mentally unfit into two classes, the defective and the insane. The first class is called the feeble-minded, the idiots and imbeciles, the aments, and is incurable in all but exceptional cases. The insane are mentally diseased, and the treatment accorded any sick person is their due.”<sup>162</sup> The text contains a footnote related to the word “sick” that reads,

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<sup>160</sup> Ibid.

<sup>161</sup> Again speaking to the first category, Yoakum writes about the cost of the justices system, “over all these sources of crime, poverty, and financial loss, Texas exercises no general control.” 12.

<sup>162</sup> Yoakum, *Care of the Feeble-Minded and Insane in Texas*, by C. S. Yoakum. Ph.D.

“The writing has used the word ‘sick’ to describe any condition of the mind needing expert treatment. Its meaning thus approximates that of ‘abnormal.’”<sup>163</sup>

EDUCATIONAL CLASSIFICATION OF FEEBLE-MINDED.		
Asylum Care	IDIOT	
	Profound	{ Apathetic } Unimprovable. { Excitable }
	Superficial	{ Apathetic } Improvable in self-help only. { Excitable }
	IDIO-IMBECILE	
	Improvable in self-help and helpfulness. Trainable in a very limited degree to assist others.	
Custodial Life and Perpetual Guardianship	MORAL IMBECILE	
	Mentally and morally deficient.	
	Low Grade: Trainable in industrial occupations; temperament bestial.	
	Middle Grade: Trainable in industrial and manual occupations; a plotter of mischief.	
Long Apprenticeship and Colony Life Under Protection.	IMBECILE.	
	Mentally deficient.	
	Low Grade: Trainable in industrial and simplest manual occupations.	
	Middle Grade: Trainable in manual arts and simplest mental acquirements.	
Trained for a Place in the world.	BACKWARD OR MENTALLY FEEBLE.	
	Mental processes normal, but slow and requiring special training and environment to prevent deterioration; defect imminent under slightest provocation, such as excitement, over-stimulation, and illness.	

Figure 3: Yoakum’s replication of the educational classification of the feeble-minded

The salience of feeble-minded as a category never comes into question. Disability scholars David Mitchell and Sharon Snyder describe the etiology of feeble-mindedness as such: “Once ‘idiocy’ lost its scientific allure as an overarching classification, ‘feeble-mindedness’ became the primary diagnostic category that allowed eugenics to

<sup>163</sup> Ibid.

consolidate a host of defective types under a shared heading.”<sup>164</sup> Snyder and Mitchell further note that “a static principle of cognition informed eugenicist ideology,” allowing for the belief in the labels accuracy and efficacy.<sup>165</sup> Snyder and Mitchell demonstrate that eugenicists consistently argued the case for feeble-mindedness on physiognomic grounds, noting, “the field promoted a slanderous ideological violence against all cases of disabled people based on stigmatized physical, sensory, and cognitive characteristics.”<sup>166</sup> This classification undergirds Yoakum’s study, capturing perceptions of disability in early twentieth century schools in Texas.

Yoakum’s investment in categories of mental fitness imbues him with a drive to take action for what he perceives as the betterment of the citizenry. He argues for the need for more resources in, among other places, schools; Yoakum cites examples and letters from judges in Texas regarding individuals who need additional support, demonstrating the lack of sufficient services. Writing in more detail about the problem:

Superintendent Eddings, of the Training School at Gatesville, states that a great many of his boys are distinctly feeble-minded. The state supplies no means for the proper care and training of these delinquents, either through the public school system or at this special detention home. No classification has been made so that the officers may know the training and education proper for different students in this school. The result is that, however, careful and painstaking the superintendent and his co-workers may be, they are wholly unable to handle the situation in a scientific and satisfactory manner. Texas is at present making a feeble attempt to establish a similar school for delinquent girls.<sup>167</sup>

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<sup>164</sup> Snyder and Mitchell, *Cultural Locations of Disability*.

<sup>165</sup> Ibid. 81.

<sup>166</sup> Yoakum, *Care of the Feeble-Minded and Insane in Texas*, by C. S. Yoakum. Ph.D.

<sup>167</sup> Ibid. 21-22.

Yoakum's characterization of the state's "feeble" attempt to establish a school for girls shows the terms continued use in non-scientific manners. While Yoakum does not explicitly address race in his study, though he at times refers to negro men or women when describing those incarcerated or in need of better care, the absence of any mention of the Jim Crow structure at Gatesville is notable here.<sup>168</sup>

Yoakum's concern for feeble-minded students is that the state doesn't supply for the "proper care and training of these delinquents, either through the public school system or at this special detention home." He further notes that educational professionals "are wholly unable to handle the situation in a scientific and satisfactory manner." The only location in Texas Yoakum identifies as having special care for feeble-minded students is a single room in Houston, where the teacher notes, "they have many more applications than they can admit." Noting that Texas has made no other provisions than this one room in Houston, seen in the image on the following page, Yoakum explicitly pursues segregation as the most appropriate course of action for these students. A dissertation from 1918 focused on history of the Houston public schools also highlights this one room, and explains the services offered there as follows:

Special provision was made under the new curriculum for exceptional children. In 1906-07 the first room for them was located in Rusk School. By 1914-15 there were rooms for the extra bright pupils, for pupils of subnormal mental ability, for pupils badly retarded, for pupils employed part time, and night classes for those employed all day.<sup>169</sup>

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<sup>168</sup> Bush, *Who Gets a Childhood?* As mentioned earlier in this project, Bill Bush notes that when the school opened in 1889, 46 of the first 68 inmates were African Americans, all transfers from the adult prison system.

<sup>169</sup> Keller, "A History of Public Education in Houston, Texas."

Services included in this initial program included “corrective teaching” and “corrective health habits” along with separate curriculum, and physical items such as additional materials and transportation.<sup>170</sup>



PLATE IV.

Class with their Teacher in Special Room of the Rusk School, Houston, Texas.

Figure 4: Yoakum’s photo of special room in Houston, Texas

Yoakum centers what he feels is the lack of scientific analysis and application as it relates to students designated feeble-minded as one of the chief rationales for concern. His statements here demonstrate the importance of “science,” here meaning eugenic

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<sup>170</sup> Marguerite Nelson Stibick, “Equipment and Facilities of Certain Public School Special Education Programs in Texas” (1953). Additionally, a dissertation, dated 1917 in its front pages but formally listed as 1924, uses the word “retardation” to refer to various impediments to student progress. Causes listed range from “mentally slow” to “irregular attendance.” The author notes that “parents are chiefly responsible for the other causes of retardation, and can be reached only in the development of public sentiment in favor of education.” Elzy Dee Jennings, “Educational Efficiency: A Study of the Work of the Austin Public White Schools” (1924).



science, in establishing a course of action. He elaborates further on the problem of such students in the classroom:

It would be impossible to show the difficulties in the schoolroom where such feeble-minded, or low-grade, backward children are found. We can scarcely estimate in any satisfactory way the effect upon the teacher who has to handle such a child—the effect upon the normal child who must remain in the room with the nervous, irritable, or disagreeable person of this type.<sup>171</sup>

Citing the effect on other child, Yoakum also forwards a notion that not treating deficiencies effectively threatens the rest of the populace. Further exploring Texas as the site of modern institutions and colonies, Yoakum publishes several other letters lauding the work of institutions for “weak-minded children” and advocating for access for parents without financial means. Yoakum reinforces the letter writers argument by describing both other letters he has received and adding “in the city of Austin the writer knows personally of families who would gladly send their children to such schools and pay the actual cost of schooling if the school existed.”<sup>172</sup> At this point in 1914, Texas boasted one private institution in Austin, with “meager facilities for about thirty pupils or patients,” and no state institutions.<sup>173</sup> Yoakum goes on to describe how a superficial examination of students in Austin school reveals a substantial number of students unable to do the work independently, to the detriment of the progress of other students.<sup>174</sup>

“From a financial standpoint, segregation of the defective delinquent would be a great economy to say nothing of the more salient feature, that of stopping them from producing their kind.” Segregation provides a means to economic fitness by supposed

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<sup>171</sup> Yoakum, *Care of the Feeble-Minded and Insane in Texas*, by C. S. Yoakum. Ph.D. 47.

<sup>172</sup> Ibid. 61.

<sup>173</sup> Ibid. 69.

<sup>174</sup> Ibid. 23.

care aimed at halting reproduction. He goes on to indicate that such segregation and confinement would keep “the defective delinquent” from repeated admittance to penal institutions. Yoakum’s assertions are progressive at the time precisely because they favor medicalization, which implies some degree of curability despite the fixed notions of classification and the clear eugenicist assumptions embedded in this thinking. Still, anticipating backlash to the argument that children should be confined to an institution for the duration of their lives, Yoakum cites an additional scholar who tells an anecdote describing those in perpetual care of the state as “the happiest children.”<sup>175</sup>

Expounding further on the history of treatment, Yoakum’s argument emphasizes educating individuals to the level of their inherited capacity as an “essential principal of social solidarity.” The two key questions further concerning Yoakum’s study involve first the proper diagnosis and classification and second the corresponding appropriate methods of education.<sup>176</sup> “Schools for the feeble-minded are not to make them trained and educated persons in the usual sense of the term: their purpose must be merely to develop and train to the point of mental arrest.”<sup>177</sup> Yoakum evidences a strong belief in inherited, fixed mental limits. Yoakum further gets into the changing meaning of the term idiot, noting that “in early times the term idiot inspired horror and disgust,” a problem he notes too often remains that case. Yoakum himself cites the deep historical roots of such connotations noting that Luther and Calvin believed idiots to be filled with Satan. He further notes that the first attempt to educate students the feeble-minded in a scientific

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<sup>175</sup>Ibid. 49. Citation in text is Emerick, E. J. Supt. Inst. Sch. For F.M., Columbus, Ohio; The Segregation of the Defective Classes, Proe. N. E. A., 1912, pp. 129|-2.

<sup>176</sup> In illustrating a series of questions to ask a child in the process of assessing their mental age, the first question involves asking the child “Are you a girl or a boy?” Besides the clear invocation of rigid gender norms, such classifications determine how a child should be educated.

<sup>177</sup> Yoakum, *Care of the Feeble-Minded and Insane in Texas*, by C. S. Yoakum. Ph.D. 65.

manner came in 1798. Such citations begin Yoakum's longer discussion of the history of classification and treatment of the feeble-minded in various countries and across the United States.

Yoakum's study goes on to present "three typical cases in Texas now needing institutional care."<sup>178</sup> These cases, letters from Texas citizens, describe both the children and their orientation towards political action regarding the feeble minded in Texas. Yoakum also profiles individual students in order to illustrate his point about the children's need for care outside of what the Texas provides at the time.

Case E. — R. W. Boy: fourteen years old. Under training came quite efficient in household service; but disobedient, hard to manage, and an incorrigible thief, stole even from himself. Thus, some years ago he came in possession, to his great delight, of a toy—a little rubber toad. In a few minutes, however, the toy disappeared. He screamed, cried, and protested that someone had stolen it. Upon investigation it was discovered securely tucked away in his glove. He had secreted it—stolen it from himself—simply to create excitement. K. was born at full term: ordinary labor. There were four or five children; two sisters living; one boy next older than E., an idiot, was killed by the cars. Mother, imbecile, forty-five when child was born; father, a day laborer, age unknown. Mother had two feeble-minded sisters, one of whom had an illegitimate feeble minded son, whose father was also feeble-minded.

Case H. —G. A. Boy, aged ten years when photograph was taken. An adroit thief, an accomplished liar, brutal, cruel, and dangerous to smaller boys. In training class learned to knit and darn stockings. Was very deft with hands, but too dangerous a character to be trusted with tools. Could pick any lock. Under supervision was fairly good at both farm and housework. Enticed away at eighteen years, he disappeared for five years and, drifting from farm to farm, giving unlimited trouble, finally, in a spirit of revenge, set fire to a barn and was arrested. During trial he confessed to no less than fifty burglaries, many of which had for a long time baffled the detectives. A waif and stray; nothing is known of family history.

Case B.—L. K. Girl, aged fourteen years when photograph was taken. Came to the Training School in her sixth year. An attractive child with blue eyes and

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<sup>178</sup> Ibid. 67.

yellow hair. Willful and obstinate at first, but soon responded to influence. Quick to imitate; did well in kindergarten, and later in school learned to read and write, to sew and embroider, but began to deteriorate morally, and after her eighth year never ceased to give trouble. Using her accpirements for evil purposes, she was at sixteen a thief, a liar, and a nymphomaniac who could not be trusted alone, and would pass notes to boys in the most ingenious fashion. An expert in thieving, she could lie with the most unblushing effrontery and apparent innocence. Could be clean in speech and circumspect in conduct, but at times in both language and action was most vile. Had wonderful influence over girls of lower grade and used them as tools. In her twenty-fifth year, having grown to be an attractive and even handsome young woman, she was yet so unmanageable that she was transferred to an insane hospital. From there, through the ill-advised efforts of some sentimental philanthropists, she was released with the idea that she was capable of self-support. Since then she has drifted naturally downward, and having given birth to an illegitimate child, is now in the syphilitic ward of a charity hospital.<sup>179</sup>

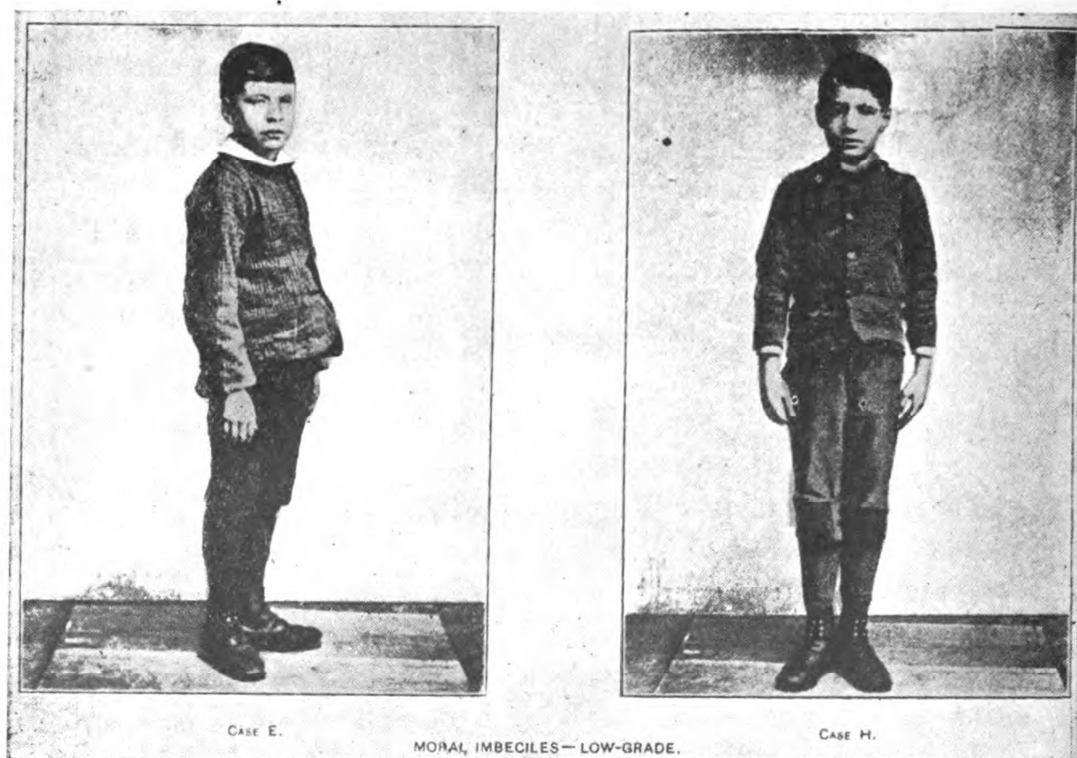


PLATE V.

Figure 5: Photos of Case E and Case H students in Yoakum's Study

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<sup>179</sup> Ibid. 36-37.

Even taken together the profiles of the students contain little evidence to support claims of mental deficiency or its hereditary basis. The description of Case E. stealing his own toy, some unspecified years ago, does not prove the boy's disobedience, as such behavior seems within the realm of child-like behaviors.

The profile of the female student, Case B., evidences the researcher's male gaze, particularly in the assessment of her attractiveness. She's positioned as delinquent primarily for her interest in the opposite sex, with her tendency to pass notes to boys providing the evidence leading to the label "nymphomaniac." The mentions of potential hereditary transference and the fear of Case B.'s sexuality rests on a fear of the future of the nation and deliberately creates grounds for limiting reproduction. Scholar Adrienne Asch notes that such discrimination and disability bias persists past the decline of eugenics as a social movement. Asch writes, "Until the advent of scholarship and activism based on a social model of disability, few clinicians and bioethicists ever questioned the wisdom of using technologies to prevent bringing children with disabilities into the world."<sup>180</sup> While the concern here is ostensibly about rehabilitation, Yoakum elaborates on his perceived merits of segregation, explicitly stating that one of the financial benefits of what he calls "segregation of the defective delinquent," would be to stop them from future reproduction. He quotes, John Glenn, at the time the Director of the Russell Sage Foundation; "One of the most shocking and easily cured evils is the increase of the feeble-minded, the begetters of numerous degenerate children. The remedy is their segregation by the State, especially of the females."<sup>181</sup> While arguing

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<sup>180</sup> Adrienne Asch, "Reproduction," in Reiss and Serlin, *Keywords for Disability Studies*.

<sup>181</sup> Yoakum, *Care of the Feeble-Minded and Insane in Texas*, by C. S. Yoakum. Ph.D. 81. Quoted from Glenn, John M., Director Russell Sage Foundation: "The Church and Social Work," N. Conf. C & C., Seattle, 1910.

segregation as the most feasible course of action Yoakum further promotes practices of sterilization in eleemosynary institutions.

The student case profiles do not have further explanation about their link to a particularly classification of recommendations on how to improve their behavior. Yoakum further profiles several more students whose stories are not discussed here, yet his notes and analysis follow similar patterns regarding the links between their mental deficiency and moral deficiency, the potential hereditary causes of their behavior, and the subjective descriptions imbued with a sense of scientific objectivity. In conclusion, Yoakum writes of all of the students, “they are unmanageable at home and in the ordinary school, a source of continual annoyance to the community.” Yoakum is recommending separate set of institutions for these children. Yoakum draws the explicit links to eugenicist thinking:

The general problem of racial betterment is broader than the one we have set ourselves here. The program is far-reaching and looks not only to the reduction of unfit social strains, but also to the increase of those proved and socially valued traits of character in man. The problem of racial betterment is called in modern phrase, eugenic.

Yoakum succinctly states his recommendation: “Texas must build institutions for the training and custodial care of her feeble-minded youth soon.”<sup>182</sup>

Yoakum’s scholarship represents an early contribution to an ongoing codification of the terms of the debate over disabilities; while he’s arguing for an intervention, his deeper concerns are about fitness for citizenship, both of which align with legislative initiatives introduced in the years following the publication of his work. Yoakum makes the connection to eugenics still more clear. While only making the link implicit here, Yoakum draws the explicit parallel immediately afterward:

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<sup>182</sup> Ibid. 84.

Eugenic education, better environment, and systems of matings purporting to remove defective traits do not affect the impure blood or inheritable factors with the surety necessary to eliminate defects. Laissez –fair or natural selection, euthanasia, neo-malthusianism, and polygamy are either impossible under the protective forces of modern social conditions or are ideas repugnant to present-day ideals of religion and humanity. Of all the solutions suggested, the two most advocated are sterilization and segregation. Both of these ideas were embodied in bills submitted to the last Legislature in Texas.<sup>183</sup>

Yoakum is attempting to create a crisis regarding the lack of facilities and support for feeble-minded students, in part a response to the political reality shortly before he published. In January 1913, several legislators introduced a bill attempting to establish another such institution—Reeves and Webb introduced House Bill no. 376 and Nugent simultaneously introduced Senate bill No. 187. Despite passing both houses, the Governor vetoed the bills.

More legislation passed in the years following the publication of Yoakum's work. In 1915, House Bill 73, such cries further gain ground in the legislature, with the enactment of an act "to provide for the establishment and maintenance of a State Farm Colony for the feeble minded."<sup>184</sup> The response to the crisis is further state action to protect against perceived threats to the citizenry, a category circumscribed by race, gender, and ability. The language of this bill notes:

It shall be the purpose of this colony to educate by such special methods as the best modern science has discovered, the feeble minded children of the State that are capable of being educated and to provide suitable work and supervision for the adult feeble minded who are not able to protect and support themselves at large as law-abiding citizens, to the end that these unfortunates may be prevented from reproducing their kind and society relieved of the heavy economic and moral losses arising from the existence at large of these unfortunate persons.

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<sup>183</sup> Ibid. 82.

<sup>184</sup> Acts 1915, 34th R.S., ch. 90, General Laws of Texas

Ex-officio members of the proposed institution include the State Superintendent of Public Instruction and ranking Professor of Child Psychology from the University of Texas Department of Education. Section 5 further includes the stipulation that preference be given “first, to girls, and women of child bearing age, and to those of both sexes who are mostly likely to profit by the special education and training.” In this legislation a feeble minded child is defined as “one of such mental and moral powers as to be unable to profit by the ordinary methods of education employed in the commons schools.” The law cites the lack of any existing law for care of the feeble-minded while invoking the “great economic and social injury” caused by such an absence.

Giordano’s *American Special Education* also quotes Doll 1919, “Feeble-minded children in public school are a menace to the normal children.”<sup>185</sup> Other scholars at the start of the 20th century promoted a strong link between disability and crime affirming beliefs such as “every feeble-minded child is a potential criminal” and “the majority of criminals are mentally defective.”<sup>186</sup> The perceived limited capacity of children labeled as feeble-minded was further seen as limiting their ability to make appropriate moral choice choices, a rhetoric that shifts to more secular notions of an inability to compete in a global economy. All of these rhetorics echo and reinforce racist ideologies. This fundamental link between feeble-mindedness and criminality again undergirds the contemporary school-to-prison pipeline.

The general expansion of public school as an institution, both by geographic spread and through students staying in school longer, led to further attention to the matter. Several scholars within disability studies have examined the constitutive role of

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<sup>185</sup> Giordano, *American Special Education*. 47.

<sup>186</sup> Ibid. 56.



eugenics in creating discourses about fitness for a belonging in a national body. This link emerges clearly in the Texas legislative record. State actors continually grapple with notions of disability as the terminology varies over time—what does and does not belong in this classification transforms demonstrating the fields’ social contractedness. For example, bills in 1921 feature not only the term eleemosynary, but also reference “habitual drunkards” and the State Tuberculosis Sanatorium. This classification alone in many ways shows the fine and/or fictive line between disease and disability.<sup>187</sup> A paragraph from the legislature in 1923 outlines a litany of institutions that fall under this term, including a separate institution for “colored youths.”<sup>188</sup> Even the names of the institutions show a clear conflation of race, disability and disease.<sup>189</sup> Yoakum’s

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<sup>187</sup> One of the stranger studies conducted on students that I discovered in my research regarded the retardation of students afflicted with a particular disease. This paragraph from “The Psychology of Subnormal Children” by Leta S. Hollingworth reads, “Dr. T. L. Kelley made a similar experiment with school children in the State of Texas, using educational tests instead of mental tests. His experiment extended over six months, and he investigated the effects of malaria as well as the effects of hookworm. Unfortunately no group corresponding to group B in Dr. Strong’s experiment was used by Dr. Kelley, so that it cannot be stated in connection with his work what amount of gain would have been made in the educational tests by a group of children infected with malaria or with hookworm, but not treated. It can only be stated that children cured of disease gained in these tests slightly more than did children tested in the same manner and on the same occasions, who had not been infected at all with the diseases under investigation. From this it is suggested that hookworm and malaria are influences making for retardation in school subjects, since when they are removed there is a greater gain than with healthy children. The influence shown is not great, however, and not entirely consistent, as in the Courtis Tests in the fundamentals of arithmetic the cured-of-disease group showed less improvement than did children who had never had the diseases, and from whom no such handicap was therefore removed.” Hollingworth, *The Psychology of Subnormal Children*, p. 232. This same study includes information on motor and handwriting tests conducted on students.

<sup>188</sup> 38th 3rd CS (1923).

<sup>189</sup> The full list from 1923 reads, “Relating to making appropriations to pay the salaries of officers and employees of certain eleemosynary institutions of this State and other expenses of maintaining and conducting them for the two fiscal years beginning September 1, 1923 and ending August 31, 1925 as follows, to-wit: Confederate Woman’s Home; State Confederate Home; State Lunatic Asylum; State Pasteur Institute; Southwestern Insane Asylum; North Texas Hospital for the Insane; East Texas Hospital for the Insane; State Epileptic Colony; State Orphan’s Home; State Institution for Training Juveniles; Girls’ Training School; State Colony for Feeble Minded; State Tuberculosis Sanatorium; Hospital for Crippled Children; Deaf, Dumb and Blind Institute for Colored Youths; Northwest Texas Insane Asylum; State Home for Dependent and Neglected Children.”

scholarship contributed to an ongoing codification of terms of the debate over disabilities in Texas, while simultaneously attempting to challenge them. Ultimately, his deep entrenchment precluded any real change and revealed more continuity.

Yoakum's challenge to the lack of resources provided for feeble-minded children in the state of Texas reinforced beliefs about a fundamental inheritability of fitness for citizenship. While Yoakum believed that "scientific" diagnosis and medicalized intervention proved superior to practices of penalization, again the practices intent remained the same—isolate undesirable traits in the citizenry. The logic and intervention here set in place a system that retained its salience even as eugenicist thinking lost its overt popularity. Instead, the eugenicist of the assumptions of the field faded away as the term and discipline fell from favor. However, in the following years the general expansion of public school as an institution increased both the debate and the implementation of categories of special education, categories grounded in notions of disability. The stated goal of such school practices was rehabilitation of those students who deviate from an implicit or explicit normal. Such interventions did not address the structural debility embedded in the system at the time – students of color were already segregated and ineligible for rehabilitation. Today's special education is borne from the definitions, crises, and contestations, related to notions of medicalized abnormality, particularly as it pertains to social fitness.<sup>190</sup>

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<sup>190</sup> While this chapter focuses on mental classifications, Texas schools for the deaf and blind began to protest their classification as eleemosynary rather than educational institutions, in the 1880s, yet the categorization persisted for several decades following. From Mary McKenney Nelson, "A History of the Care of Defectives in Texas" 1926.

## I.Q. TESTING AND SCIENTIFIC RACISM

Practices derived from scientific racism played a still larger role in the construction of the school system, through the creation of testing regimes. Wayne Au's argument about the relationships between high-stakes testing and educational and social inequality recounts standardized testing's origins in I.Q. testing and eugenics.<sup>191</sup> I.Q. testing and scientific racism emerge concurrently and help to create and reinforce the other's validity. Skiba et al. also further describe I.Q. testing's explicit link to eugenicist thinkers and thought patterns; "Early 20<sup>th</sup> century mental testing was grounded in the premise of American eugenics that races other than those of northern European stock were intellectually inferior, and that the purity of the superior races should be preserved by vigorously segregating the feeble-minded."<sup>192</sup> Scholars such as Carol Silverberg examine the scientific factors that motivated the I.Q. testing movement, following sciences of craniometry and phrenology, sciences essential to establishing and forwarding theories of scientific racism.<sup>193</sup>

Alfred Binet first developed the test in 1904 as a way to assess developmentally disability in young children for the French government. Dividing mental age by chronological age led to an "intelligence quotient."<sup>194</sup> I.Q. testing's application spread beyond its initial design through a group of cognitive psychologists in the United States

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<sup>191</sup> Wayne Au, *Unequal by Design: High-Stakes Testing and the Standardization of Inequality*, The Critical Social Thought Series (Routledge, 2008). 34.

<sup>192</sup> In Russell J. Skiba et al., "Achieving Equity in Special Education: History, Status, and Current Challenges," *Exceptional Children* 74, no. 3 (Spring 2008): 264–88.

<sup>193</sup> Carol Silverberg, "IQ Testing and Tracking: The History of Scientific Racism in the American Public Schools: 1890–1924" (Ph.D., University of Nevada, Reno, 2008), <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/304540189/abstract?accountid=7118>. 7.

<sup>194</sup> Au, *Unequal by Design*; Stephen Jay Gould, *The Mismeasure of Man*, Rev. and expanded (New York: Norton, 1996).

from similar backgrounds, with similar social perspectives and values.<sup>195</sup> Silverberg's analysis demonstrates that those led the testing movement, including Alfred Binet, Lewis Terman, and E. L. Thorndike, sought to "redesign democracy in order to ensure the status quo, the hegemony of the White Anglo-Saxon, the "Nordic race."<sup>196</sup> Each of these men came from middle class town families with strong Protestant values emphasizing hard work, responsibility, and self-control.<sup>197</sup> Terman particularly emphasizes the hereditary concept of intelligence with his scholarship emphasizing that children, "so labeled, should be sorted, trained according to their inheritance, and channeled into professions appropriate for their biology."<sup>198</sup> Terman's premise regarding the constancy of mental ability, described in his 1916 work, *The Measurement of Intelligence*, rests not on an established definition of intelligence, for which little scholarly consensus exists, and instead drew up the conclusions of the instruments themselves as evidence.<sup>199</sup> Terman's work presents his ideas with a surety about the validity and decisiveness of I.Q. as an intelligence measure.

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<sup>195</sup> While Au, *Unequal by Design* argues that American cognitive psychologists distorted Binet's intent, other scholars classify his perspectives and intent similarly; Clarence J. Karier, *Shaping the American Educational State, 1900 to the Present, Urgent Issues in American Society Series* (New York: Free Press, 1975); Silverberg, "IQ Testing and Tracking."

<sup>196</sup> Ibid. 7; Paul Davis Chapman, *Schools as Sorters: Lewis M. Terman, Applied Psychology, and the Intelligence Testing Movement, 1890-1930* (New York: New York University Press, 1988). Silverberg further cites Paul Chapman (1988), H. Minton (1987), M. Sokal (1984), and Franz Samelson (1979).

<sup>197</sup> Silverberg, "I.Q. Testing and Tracking"; Clarence J. Karier, *Shaping the American Educational State, 1900 to the Present, Urgent Issues in American Society Series* (New York: Free Press, 1975). 14.

<sup>198</sup> National Education Association of the United States, *Intelligence Tests and School Reorganization*, ed. Lewis M. Terman (Yonkers-on-Hudson, N.Y: World Book Company, 1922).

<sup>199</sup> Lewis M. Terman, *The Measurement of Intelligence: An Explanation of and Acomplete Guide for the Use of the Stanford Revision and Extension of the Binet-Simon Intelligence Scale*, Riverside Textbooks in Education (Boston: Houghton Mifflin Company, 1916).

Preliminary studies indicate that: an I.Q. below 70 rarely permits anything better than unskilled labor; that those in the 70 to 80 range are preeminently capable of semi-skilled labor; those with scores from 80 to a 100 are capable of skilled labor or ordinary clerical work; from 100 to 110 or 115 will be able to pursue semi-professional careers; and above all these are the grades of intelligence which permit one to enter the professions or the larger fields of business.<sup>200</sup>

These classificatory realms allowed for sorting students, both at school, and, as this passage demonstrates, to whichever career made the most sense of that sort of student. Subsequently, other scholars demonstrated how Terman's ideological commitment to his Protestant ethic upbringing impacted his research; and much later, scientist Stephen J. Gould shows Terman misrepresented his data.<sup>201</sup> However such critiques I.Q. testing did not stem its use for classifying children in schools. Testing as a punishment thus not only separated students deemed intellectually unfit for full citizenship, but also, as the following chapter examines, plays an explicit role in both racial categorization and the racialization of disability. The next chapter examines these subsequent uses of I.Q. testing and evaluates critiques of I.Q. testing for segregating Mexican-American students specifically and for defining racial groups more broadly.

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<sup>200</sup> Ibid.

<sup>201</sup> Gould, *The Mismeasure of Man*; Further examples of Terman's ideological leanings can be found in Silverberg, "IQ Testing and Tracking."

### Chapter 3: Race, Language, and Special Education, 1930-1953

The school population brought together by compulsory public education includes large numbers of exceptional children who differ so markedly from the rest of the group in their physical, mental, and social development that they require special attention if their education is to be successful. These exceptional children confront the public school with a number of important educational problems. The instruction of these children in the regular classrooms places an extra burden on the teaching staff and handicaps the efficient instruction of the average group without, however, suitably providing for the needs of the exceptional children themselves. This situation materially reduces the efficiency of instruction and is reflected in the problems of over-ageness, school failure, early elimination from school, maladjustment, and juvenile delinquency. —Edgar A. Doll, 1932<sup>202</sup>

Edgar Doll's 1932 quote lists a broad swath of conditions leading to a student's characterization under the category "exceptional children." While Doll doesn't mention race, his characterizing groups using "physical, mental, and social development," references a white able-bodied student as the normal—a student suited to the system and the teaching staff.

While white citizens ensured African-American citizens subordinate status in the Jim Crow south, the link between whiteness and citizenship also impacted Mexican-Americans. While the end of the Mexican American War and the 1848 signing of the Treaty of Guadalupe Hidalgo technically granted Mexicans citizenship as Americans, most people's lived experience demonstrated the fiction of this protection. Brian Behnken explains "Anglos forcibly dispossessed Mexican-descent people of their land, and most Mexicans who remained in the United States found the citizenship aspects of the treaty virtually worthless."<sup>203</sup> When the treaty failed to grant citizenship, some Mexican-origin individuals sought citizenship through the 1790 Naturalization Act, but its stipulation of

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<sup>202</sup> Edgar A. Doll, "Special Education as a Department of School Administration," *The Journal of Educational Research* 26, no. 4 (1932): 241–48.

<sup>203</sup> Brian D. Behnken, *Fighting Their Own Battles: Mexican Americans, African Americans, and the Struggle for Civil Rights in Texas* (Chapel Hill: University of North Carolina Press, 2011). 24.

whiteness as a prerequisite for citizenship precluded its success. Ricardo Rodriguez, who immigrated to San Antonio from Mexico in 1883, took his case to the courts a decade after his arrival. In 1896, the same year *Plessy v. Ferguson* established the doctrine of “separate but equal” and defended the segregation of black bodies traveling by rail car, Rodriguez appeared before Judge Thomas Maxey. As such definitions of race and ethnicity relied heavily on skin color, this emphasis on visual assessment left Hispanic students and citizens in an ambiguous place in both theory and practice. Maxey, faced with the task of racial classification outside of a black/white binary, both asserted that a “strict scientific classification” categorized Rodriguez as non-white and cited the Treaty of Guadalupe Hidalgo’s promise of Mexican eligibility for citizenship. Brian Behnken joins Neil Foley in asserting that the case’s ruling for Mexican eligibility for citizenship essentially equated to a ruling that Mexicans should be naturalized as whites.<sup>204</sup> Behnken further asserts, “*In re Rodriguez* enshrined Mexican American whiteness in the canon of law.”<sup>205</sup>

The constitution’s establishment of simplistic notions of racial categorization in the 1876 Constitution relies on an understanding of the term “colored” that does not require further elaboration or definition, as its definition of the opposite of white played out in other areas of popular culture, law, and society. Post-Reconstruction, pre-*Plessy v. Ferguson*, this articulation of race in the state constitution reveals a simplistic conceptual

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<sup>204</sup> Ibid.; “Straddling the Color Line: The Legal Construction of Hispanic Identity in Texas,” in *Not Just Black and White: Historical and Contemporary Perspectives on Immigration, Race, and Ethnicity in the United States*.

Ethnicity in the United States, ed. Nancy Foner and George Fredrickson (New York: Russell Sage Foundation, 2004), 341-357.

<sup>205</sup> Ibid. 25.

divide of white and non-white children, a notion of clear cut racial categories that relies on biologically grounded conceptions of race that can be reinforced by visual parameters. These clear-cut racial divides fail to hold up throughout Texas history, and Texas provides a particularly interesting case study because of its varied racial and ethnic geographies. In particular, the intersection of racial categories also demonstrates how historical ambiguity and overlap of categories of Hispanic and white and Hispanic and black allow for segregating students of color while still complying with legal notions of desegregation that define Hispanic students as white. Thus the current tri-partite segregation of Texas public schools is both not a new phenomenon and still constitutes news today.

Leading up to 1930, the common practice of segregating Mexican American students in Texas public schools resulted in inequity between Mexican American and white students. While scholars differ slightly on the timeline, segregated schools for Mexican American students opened along with the institutionalization of public education. Cynthia Orozco identifies the period as 1902 to 1940, with many segregated schools for Hispanic children opening post-1920. Orozco notes that by the end of the period, the 1942–43 school year, such segregated schools operated in 122 districts in fifty-nine counties in Texas.<sup>206</sup> Alvarez (1986) also cites the 1920s as the key decade for the institutionalization of segregated public schools and adds that the number of such schools doubled between the 1920s and 1930s. Other scholars, including Brian Behnken, Gilbert González, and Ruben Donato, demonstrate the extent of explicit de jure segregation of Mexican American children in public schools.<sup>207</sup>

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<sup>206</sup> Cynthia Orozco E., “Del Rio ISD v. Salvatierra,” June 12, 2010, <http://www.tshaonline.org/handbook/online/articles/jrd02>.

<sup>207</sup> Gilbert G. Gonzalez, *Chicano Education in the Era of Segregation* (Denton: University of North Texas Press, 2013); Rubên Donato, *The Other Struggle for Equal Schools : Mexican Americans During the Civil*



While the Texas state constitution formally segregated black students, the segregation of Mexican-American students occurred as a matter of practice and through the state's English only laws.<sup>208</sup> Strict enforcement, including expulsion, accompanied rules outlawing speaking Spanish on school grounds that emerged in the 1920s. These rules preceded a larger English only movement in the state later in the century. The initial creation of segregated schools for Mexican-American students lacked uniformity. In one example, a small number of Tejano students attended the first public school in El Paso in 1883, but "the unwillingness of local school officials to teach those who did not know any English discouraged more from attending."<sup>209</sup> In an effort to meet the community demand for education, Olivas V. Aoy, an elderly Spaniard opened a private school in 1887 with the purpose of preparing children for the public schools. Growing demand for the school led school board officials to incorporate Aoy's school into the public school system on a segregated basis. In 1919 legislators again strengthened the English-only bill this time broadening its application to include not just teachers, but all public personnel including board members and administrators, and to ensure implementation, made teaching in a language other than English a criminal offense.

Justification for the segregation of Mexican-American students, thoroughly in place at the start of the twentieth century, consists primarily of overt racism. A 1929 explanation from school officials in Neuces County, Texas, defends segregating

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*Rights Era*, SUNY Series, the Social Context of Education (Albany, NY: State University of New York Press, 1997); Behnken, *Fighting Their Own Battles*.

<sup>208</sup> San Miguel uses the terms Tejanos, Texas Mexicans, and Mexican Americans interchangeably "to refer to the native population of Mexican-Spanish descent and to those of Mexican descent who have become American citizens." San Miguel, *Let All of Them Take Heed*, 25.

<sup>209</sup> San Miguel, *Let All of Them Take Heed*. 11.

Mexican-American students by saying “They are an inferior race, that is all.”<sup>210</sup> Tripartite segregation of students emerges as foundational to institutionalized public education in Texas, characterizing the school systems of many communities in the state. Furthermore, this tripartite school segregation occurs in a larger societal context of overt racism, as racist real estate and finance policies structured residential segregation. Christine Drennon describes how local government and housing developers sorted spatially with restrictive covenants noting that particular properties should never be “leased, sold, demised, or conveyed, or otherwise become the property of any person other than one of the Caucasian race,” with this social scientific definition excluding Mexican Americans.<sup>211</sup> While Drennon focuses particularly on San Antonio, racially and economically restrictive real estate covenants excluding both Mexican American and African American citizens constituted common practice across Texas and the nation. Specifying Caucasian represented only one strategy. The scholastic census counting all students consisted of two lists “one of negro children and one of white,” with Mexican American and Anglo children both listed on the white list but then further categorized by surname.<sup>212</sup>

The deliberate segregation of Mexican American students allowed for the continuation of practices that ensured their inferior education. San Miguel Jr. also cites the combination of racial prejudice, class bias, inadequate resources, and a generally

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<sup>210</sup> Carlos Alcala, “Project Report: De Jure Segregation of Chicanos in Texas Schools,” *Harvard Civil Rights-Civil Liberties Law Review* 7, March 1972.

<sup>211</sup> Christine M. Drennon, “Social Relations Spatially Fixed: Construction and Maintenance of School Districts in San Antonio, Texas,” *Geographical Review* 96, no. 4 (October 1, 2006): 567–93, doi:10.2307/30034138. 575.

<sup>212</sup> Herschel Thurman Manuel, *The Education of Mexican and Spanish-Speaking Children in Texas* (The Fund for research in the social sciences, The University of Texas, 1930); Drennon, “Social Relations Spatially Fixed.”

subordinate status in society as interrelated reasons for Mexican American students' substandard education. Some efforts to combat the establishment of racial difference and racial inequity in the school systems on behalf of individuals denied equal access to education took the form of individual resistance. Guadalupe San Miguel Jr. describes an earlier challenge against segregating Mexican American students in 1928, when Felipe Vela filed a complaint against Charlotte Independent School District, south of San Antonio.

The Charlotte Independent School District maintains her public schools in two separate buildings. It has been the custom for many years for the children of Mexican nationality to attend school at one building and the white children of all other nationalities at the other building. The parents of Amada Vela desire to send her to the building occupied by other than Mexicans. This privilege was denied her by the board of trustees of the Charlotte district. The board of trustees had sub-divided the Charlotte Independent School District into wards and one of the wards was composed entirely of Mexican citizens. The board of trustees assigned the child, Amada Vela, to the Mexican school and gave as a reason for said assignment that the Mexican children were irregular in attendance and did not advance as rapidly as American children and should have special attention by the teacher which could not be given if they were intermingled in the American school. The board of trustees disclaimed any intention to segregate the Mexican children on racial grounds.<sup>213</sup>

This complaint centered on the argument that the race of the child remained unknown and that the child was not Mexican, though both sides agreed, "the board of trustees did not have the legal authority to segregate Mexican children in one school on a racial basis." Still, the school officials defended their actions on instructional grounds arguing that non-English speaking students needed to be given special instruction. Upon examination the superintendent found the student, Amada, to speak English fluently and determined that she should be permitted to attend the Anglo school despite vigorous appeals and refusals

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<sup>213</sup> From the statement of the State Superintendent of Instruction reproduced in Manuel, *The Education of Mexican and Spanish-Speaking Children in Texas*.

on the part of the district. This example further demonstrates how issues of language play into racial categorization.<sup>214</sup> In the same year Amada Vela's parents combated her segregation, Mexican American parents and students across Texas increasingly faced a similar challenge to an integrated education.

### **“THE MEXICAN PROBLEM”**

The growth of both the school system and the school-age population in the 1920s led to reports and studies on the “Mexican problem” in schools across the state. One such study conducted by Herschel Manuel in 1928, a professor of psychology and testing at the University of Texas, found school age Mexican students in all but 8 of 252 counties in Texas.<sup>215</sup> Manuel's study constitutes the subject of this section. Manuel himself emphasizes complexity and diversity among Texas' Mexican American population, but his survey documents that his attitudes do not match those of white education workers. Manuel describes the racial climate at the time of his study as such:

There is a tendency indeed for the English-speaking population to generalize their attitude of superiority and to express it toward all Mexicans . . . In Texas this is not helped by the fact that many of the Mexicans have a complexion darker, often much darker, than that of the population which on the whole is dominant in numbers, economic position, and political control. Texas has also a negro problem. Just how much the attitude toward the negro carried over to this other group it is impossible to say.<sup>216</sup>

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<sup>214</sup> San Miguel, *Let All of Them Take Heed*.

<sup>215</sup> Ibid.; Manuel, *The Education of Mexican and Spanish-Speaking Children in Texas*.

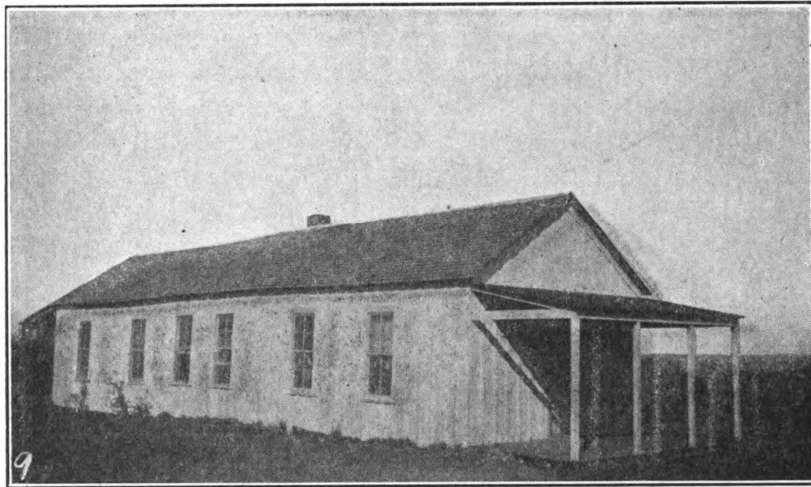
<sup>216</sup> Manuel, *The Education of Mexican and Spanish-Speaking Children in Texas*. 19.

This evaluation of general beliefs and stereotypes held at the time thus sets the stage for his findings regarding *The Education of Mexican and Spanish-Speaking Children in Texas*.

Still framing the study, Manuel quotes the Texas Educational Survey from the same year: “In some instances segregation has been used for the purpose of giving the Mexican children a shorter school year, inferior buildings and equipment, and poorly paid teachers.”<sup>217</sup> Manuel’s work confirms those findings noting many cases of obvious, often extreme discrimination against Mexican children, while also noting that there are some cases of apparent equality. While the study finds segregation widespread but not universal, Manuel also asks how many districts fail to provide any education at all for Mexican students. Despite surveying less than one-fifth of the counties on this question, Manuel found at least 17 districts with “Texas Mexican” school children and no arrangements for their education.

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<sup>217</sup> Ibid.



School for Mexican Children Just a Few Blocks from the Building  
Pictured Above



Interior of Primary Room in Mexican School

FIGURE 12.—School Buildings in a County-Seat Town of South Texas

The primary room pictured above has windows on two sides and no shades at all. Most of the desks are old hand-made double desks with seats high enough for adolescents. At the time of the writer's visit some seats held three children. A double desk turned around was used as a teacher's desk.

About studying segregation alone, Manuel writes, “It is certain that this does not tell even approximately the whole story. Even where facilities are technically available to all the white children of the community a policy of antagonism on the part of the other white population too often means that actually the Mexican child has no school open to him.”<sup>218</sup> Citing examples of this antagonism keeping Mexican children out of school, Manuel tells the story of one district where a school board member “came to school one morning with a gun to keep a Mexican child from attending!”<sup>219</sup> Manuel also publishes a note written by a county superintendent in West Texas. The superintendent writes, “I have just recently learned that there are Mexicans in two or three districts who really wanted to send their children to school, but the “whites” scare them out of it. They tell them if they send their children to school, they will be out of a job. Of course in order to hold their jobs they will not send them to school.”<sup>220</sup> The overt racism undergirding the segregation and disenfranchisement comes out in Manuel’s study, particularly in the words and actions of white parents and administrators.

Some parents object to having Mexican children in the schools because they believe them to be dirty and often infected with head lice. A bus driver told the writer that the Mexican people were “nasty” and that they lived in bunches and shacks. A superintendent writes that in his district Mexican children attend the negro school “if they live with negroes and play with negroes in the negro section.” In South Texas a rural district organized a separate school for Mexican children because there had been a great deal of sickness and the Mexicans were blamed more or less for it. According to one school principal there is a lack of innocence that creeps out objectionably in the play and talk of young children. There has been some complaint that Mexican and other children do not get along well together. The principal of a two-room school in West Texas told the writer—in the presence of his pupils among whom were Mexican children—that it

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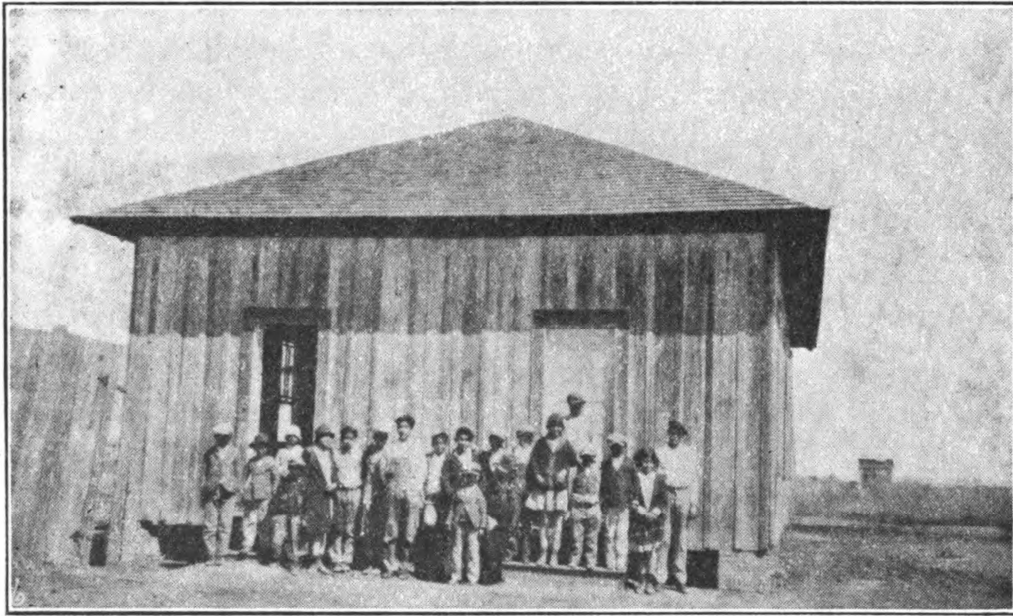
<sup>218</sup> Ibid. 72.

<sup>219</sup> Ibid. 72

<sup>220</sup> Ibid.

"causes more or less confusion" for Mexican children to be enrolled with others.<sup>221</sup>

Manuel added, "unfavorable attitudes toward Mexican children are not at all universal," but shares far fewer examples of favorable attitudes coming from school officials and administrators.



**School for Mexican Children, Grades 1-6**

Figure 7: Image of school for Mexican children from Manuel's study

Such explicit racism sustained school officials' justifications for both segregation and the lack of expansion of educational services. Historian Joel Spring findings reinforce Manuel's as he quotes one Texas farmer who states, "Educating the Mexicans is educating them away from the job, away from the dirt."<sup>222</sup> Spring also quotes a Texas

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<sup>221</sup> Ibid. 76.

<sup>222</sup> Joel H Spring, *Deculturalization and the Struggle for Equality: A Briefhistory of the Education of Dominated Cultures in the United States*, 3rd ed (Boston: McGraw-Hill, 2001).



superintendent, “You have doubtless heard that ignorance is bliss; it seems that is so when one has to transplant onions . . . so you see it is up to the white population to keep the Mexican on his knees in an onion patch or in new ground. This does not mix very well with education.”<sup>223</sup> Despite the clear obstacles facing Mexican American students, administrators and teachers rarely acknowledged their existence.

One of the surveys Manuel conducts asks teachers, principals, and superintendents why Mexican children are out of school. The full text of his findings is quoted below:

WHY MEXICAN CHILDREN ARE OUT OF SCHOOL

Among the reasons alleged by superintendents, principals, and teachers for non-attendance and irregularity of attendance are the following:

- (1) poverty —need for work (see Figure 22);
- (2) irresponsibility —lack of cultural background and interest in education (others state that Mexicans are interested in education and deny the alleged indifference);
- (3) lack of interest and sometimes actual opposition on the part of other white members of the community ;
- (4) lack of suitable clothing, especially in cold weather;
- (5) illness;
- (6) frequent moving —for example, of cotton pickers who follow the crop;
- (7) failure to understand the privileges of free schooling.

To these may be added:

- (8) failure to enforce compulsory attendance law;
- (9) sometimes a complete lack of facilities within easy range, or else very inferior provisions;
- (10) shabby treatment often received from other children in school—and sometimes, it must regrettably be recorded, the lack of sympathy on the part of their teachers. <sup>224</sup>

Notably, the first seven reasons on the list are the surveyed educational professionals’ responses. Every reason links to either real concerns about financial hardship or

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<sup>223</sup> Ibid.

<sup>224</sup> Manuel, *The Education of Mexican and Spanish-Speaking Children in Texas*.

stereotypes related to race and class. Importantly, reason number three evidences little understanding from the white officials that their actions drive students from schools – opposition is perceived as one sided and inappropriate. Erica R. Meiners writes about anger and opposition in her work *Right to Be Hostile: Schools, Prisons, and the Making of Public Enemies*.

If anger is a legitimate response to an oppressive political state, who has the agency and political power to be able to name their anger *as* anger? Certainly not youth or any other nonautonomous population, such as those incarcerated, women, the poor, and more. These populations, generally under forms of hyper-racialized surveillance, do not have the power to interrupt how their emotions are named, framed, and interpreted.<sup>225</sup>

Here we see the students’ “opposition” interpreted solely by those in a position of racial and administrative power at the school level. While Manuel has clearly added reasons eight, nine, and ten to this list of reasons because superintendents, principals, and teachers failed to acknowledge them, students’ point of view remains absent in both cases. Manuel’s study rarely captures students’ voices, though one instance occurs here as a footnote to reason number two, irresponsibility. Reproduced in the image on the following page, Manuel tells the story of a girl who demonstrates opposition not to attending school but rather to the laws preventing her from securing her education. Told she cannot attend the El Paso schools after her family moves across the border, the girl replies, “But I *will* come to school. I’ll swim the river. They can shoot me, if they want to.”<sup>226</sup> This short footnote evidences the extreme effort this girl was willing put forth to acquire education and the risk associated with such action, as she notes the potential for violence.

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<sup>225</sup> Meiners, *Right to Be Hostile*, 2007.

<sup>226</sup> Manuel, *The Education of Mexican and Spanish-Speaking Children in Texas*.

(2) irresponsibility—lack of cultural background and interest in education (others state that Mexicans are interested in education and deny the alleged indifference);<sup>7</sup>



FIGURE 22.—One Reason Why Mexican Children Are Out of School

Of 532 laborers in six onion fields visited by Mr. James A. Gosch in April, 1928, 186 (35 per cent) were children of scholastic age.

(3) lack of interest and sometimes actual opposition on the part of other white members of the community;

(4) lack of suitable clothing, especially in cold weather;

(5) illness;

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<sup>7</sup>Examples of ambition and courage in the face of great difficulties are numerous. Mr. R. R. Jones tells of a girl whose family, seeking lower rents after an accident in which her father lost both legs, moved across into Mexico. The girl continued to attend the El Paso schools. When she was told of the regulations against the attendance of children living across the river, she replied: "But I *will* come to school. I'll swim the river. They can shoot me, if they want to." Miss Lozano, working in San Antonio, found the case of a Mexican lad whose widowed mother was employed in a cigar factory. The boy was graduated with honors from the high school. The family was so poor, however, that the boy had actually to borrow a suit for the graduation exercises.

Manuel continues to intervene in the views of contemporary educators with his additions to their survey results, which he provides the reader from his own findings. Manuel assesses that a failure to enforce the compulsory attendance law, inferior provisions, and poor treatment from other students, and often teachers, contributes to their lack of educational opportunity. Several scholars argue that the lack of enforcement of compulsory attendance laws for Mexican American students was particularly discriminatory. Guadalupe San Miguel's analysis, synthesizing three other studies conducted in rural counties in Texas during the 1920s, echoes and reiterates Manuel's findings.

One of the most important practices affecting Mexican children was the enforcement of the compulsory school law. As a general rule, local school officials did not enforce the compulsory school law or else they were lax in enforcing it. The low requirements of the school law, the poverty and "apathy" of the Mexican group, the opposition of board members and other Anglos to their education, as well as financial reasons were given by different districts for not enforcing the compulsory school law.<sup>227</sup>

Another report from the 1920s notes that despite great improvements in the enforcement of compulsory attendance laws, "there are certain sections in which local prejudices are so strongly against enforcement that the law is not strictly carried out."<sup>228</sup> One of the studies San Miguel analyzes closely is a 1922 study of Karnes County, southeast of San Antonio, by E. E. Davis and C. T. Gray. In Davis and Gray's inquiry, two main reasons emerge for local officials' non-enforcement of compulsory attendance laws. First, the geographic makeup of the county actually exempted a large number of students since they did not live in sufficient proximity to a school. Second, given that the punishment

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<sup>227</sup> San Miguel, *Let All of Them Take Heed*.

<sup>228</sup> *Report on Education in Texas and Recommendations Made to the Governor and the Thirty-Seventh Legislature*,. 21. This same report demonstrates inequities in teacher pay by according to both race and gender.

for noncompliance involved a monetary fine assessed to the parents or guardians, districts argued that the parents and guardians of Mexican children out of school were so “abjectly poor that a money fine or its equivalent of any sort could not be collected from them.”<sup>229</sup> Author and researcher Davis further notes that throwing the offenders in jail for non-compliance “would have called for an enlargement of the Karnes County jail.”<sup>230</sup> Their rationale for not incarcerating students or families for non-compliance offers a glimpse of how the availability of prisons with the proliferation of the prison-industrial complex changes the calculus of decision making. The other reason cited for the inadvisability of jailing the parents of the school-age children was the anticipated debilitating impact on the local economy, as the loss of agricultural workers would ruin crops, and the broader economic well being of the area.

Another study, Paul S. Taylor’s examination of Dimmit County in 1928, emphasizes the perceived perverse effect Mexican children’s presence would have on other children. Taylor quotes a local principal who explained, “When I come to a new school I always ask the board if they want the Mexicans in school. Here they told me to leave them alone. If I tried to enforce the compulsory attendance law here the board would get sore at me and maybe cause us to lose our places, so I don’t say anything.”<sup>231</sup> Opposition of Anglo officials to the education of Mexican children reoccurs as a key reason for not enforcing compulsory attendance laws. Echoing Manuel’s study, some whites felt that education might negatively impact Mexican laborers, while others simply felt that Mexican children were intellectually inferior to Anglo children.<sup>232</sup>

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<sup>229</sup> Quoted in San Miguel, *Let All of Them Take Heed*.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

## SOCIAL SEGREGATION AND LEGAL CHALLENGES

The poor treatment Manuel documents Mexican American students encounter highlights the importance of socialization within schools and presages contemporary studies with similar findings.<sup>233</sup> Sharing a personal anecdote from her own time as a student in Texas public schools, scholar Angela Valenzuela, writing in 2010, tells a story of her own internalized oppression growing up.<sup>234</sup> Recounting a fight between two classmates, whose dislike for each other centered on class and a purposeful distinction between Mexican American and Mexican immigrant, Valenzuela reflects on what happened:

Looking back, I realize that Norma, Jovita, and all the school's Mexican Americans had to walk a tightrope of holding onto our childhood tongue and identity in a schooling context that was indifferent, even hostile, to it. Although

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<sup>233</sup> Foundational and constitutive, segregation in the public school system ultimately ensures that socialization occurs primarily within racial groups and allows for understanding idealized notions of citizenship. Socialization occurs as a result of who people spend time with and separation of people, by race, class, location, ability and language has a profound, though certainly not linear impact on attitudes and perceptions. Yet segregation itself comprises only one way that schools socialize students regarding race, and, schools themselves can be theorized as fundamentally socializing institutions. Many cultural theorists in education tackle this topic, and the socializing role of schools holds a foundational place in literature regarding social reproduction in education. Samuel Bowles and Herbert Gintis' *Schooling in Capitalist America* argues for the role of the institution in preparing students for life in a capitalist society. "Schools prepare people for adult work rules, by socializing people to function well, without complaint, in the hierarchical structure of the modern corporation." David Tyack makes a similar argument in *The One Best System* illustrating how structures from age grading to class schedules socialize students for the modern work place. Such structures explicitly and subtly dominate school logics and provide a glimpse into the implicit ideals of public education. Thus, Charles Acland's argues for the role of schools in social reproduction, writing, "Youth is a time of substantial surveillance exactly because it is a time when the culture is learned. While youth are being allowed to play with the transgressive, they are being checked and marked. The ideology of protection facilitates strategic interventions by the state and others, the purpose of which, invariable is to guarantee the smooth reproduction of social relations. With this comes the smooth reproduction of racial and ethnic, gender and class relations. In other words, at stake here is the reconstitution of particular ideas about social stability and an associated hegemony." Quoted in Acland, *Youth, Murder, Spectacle*.

<sup>234</sup> Angela Valenzuela, "Chapter 8: Uncovering Internalized Oppression," *Counterpoints* 356 (2010): 77–83.

Spanish was my first language, English assumed dominance during elementary school even as Spanish became a resource central to middle school, peer-group survival. We Mexican Americans and Mexican immigrants were subjected to English-only school policies and practices premised on cultural erasure. Texas history was particularly degrading. The way it was taught reminded us Mexicans that we were losers and that Anglos were militarily and culturally superior. Never mind that Anglos fought this war to defend their right to own slaves or that Texas Mexicans also fought and died at the Alamo.<sup>235</sup>

Valenzuela's story reveals the social impact of such segregation and erasures. The segregation of Mexican American students meant that they received inferior education and a subtractive curriculum. A variety of scholars, among them Guadalupe San Miguel Jr. and Angela Valenzuela, explicate this notion of subtractive schooling as practices that devalue students cultural heritage by removing them from the school setting.<sup>236</sup> Subtractive practices include the Anglo-centered perspective offered in textbooks, such as derogatory racial stereotypes, and suppression of the Spanish language.<sup>237</sup>

In 1992, Angela Valenzuela conducted a study of Mexican youth at Juan Seguin High School comprised of informal, open-ended interviews with students and teachers and observations at the school. Valenzuela's findings, the subject of her book *Subtractive Schooling*, include "Relations with school personnel, especially with teachers, play a decisive role in determining the extent to which youth find the school to be a welcoming or an alienating place."<sup>238</sup> In her study, she finds that teachers at Seguin often engage in verbal abuse and further recounts several specific examples. In one, a teacher, Mr.

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<sup>235</sup> Ibid.

<sup>236</sup> Guadalupe San Miguel, *Brown, Not White: School Integration and the Chicano Movement in Houston*, 1st ed (College Station: Texas A&M University Press, 2001); Angela Valenzuela, *Subtractive Schooling: U.S.-Mexican Youth and the Politics of Caring* (Albany: State University of New York Press, 1999).

<sup>237</sup> Carlos E. Castaneda in Inter-American Conference on Intellectual Interchange and University of Texas, Inter American Intellectual Interchange. Proceedings of the Inter American Conference on Intellectual interchange, June 16 and 17, 1943 in Guadalupe San Miguel, *Brown, Not White*. 25.

<sup>238</sup> Valenzuela, *Subtractive Schooling*. P.7

Johnson, tells a student, “Joel, stop thinking, you know it might hurt you, cause you some damage upstairs.” Valenzuela writes about the moment this same teacher introduced her to his class, when Mr. Johnson echoed sentiments Valenzuela found throughout the school, “namely that Mexican students are immature, unambitious, and defiant of authority, and that teachers have no power to change the situation because it’s the students’ fault.” Mr. Johnson continually articulates a belief that students’ achievements are a matter of their individual motivation and effort, despite providing little in the way of academic challenge. Furthermore, despite Mr. Johnson’s admonishment of the class, Valenzuela observes the students’ incredible self-control in the face of verbal abuse. Noting that teacher biases arise from many sources, Valenzuela assesses that “Mainly white and middle-class, these adults’ more privileged backgrounds inevitably set them up for disappointment in youth whose life circumstances differ so radically from their own.”<sup>239</sup>

While Valenzuela’s study contains a lot of nuance and careful discussion of both teachers’ and students’ positioning, on the whole she finds the school to be culturally insensitive and subtractive, in many cases as a result of statewide policy. And while class plays an important role in Valenzuela’s analysis, she notes that since class-based identities are not available to youth in U.S. society, through schools, media, or other organizations, “class remains obscure and *works through* the more palatable category of ethnicity.”<sup>240</sup> Valenzuela further argues that the school, rather than affirming students’ identities as culturally Mexican, subtract from these identifications. Valenzuela also draws on the work of Nel Noddings reiterating the argument that “students are objectified

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<sup>239</sup> Ibid. 65-66.

<sup>240</sup> Ibid.



by a double standard that calls on them to make sense of schooling when schooling is not attempting to make sense of them.” She concludes, “When the definition of what it means to be educated in U.S. society systematically excludes the Mexican culture, the Spanish language, and things Mexican, the prescription that students “care about” school can be a hard pill to swallow.”<sup>241</sup> Valenzuela writes about the 1990s here, but ultimately her search for an additive and equitable environment for Mexican American students reveals many of the same reasons scholars and activists continued to fight against the racial segregation of Mexican American students in schools.

Within this larger context of societal discrimination following assessments of the “Mexican problem,” Mexican American social, cultural, and activist organizations came together to challenge their inequitable treatment.<sup>242</sup> Formed in 1929, the League of United Latin American Citizens (LULAC) emerges as the most prominent among these organizations. A key area of focus for the organization involved combating these educational inequities and the segregated schooling of Mexican Americans, and they advanced the *Independent School District v. Salveterria* case. The case itself presents a snapshot of Mexican American segregation at the time. LULAC’s decision to forward this case occurred in the context of ongoing racial negotiation and definition in the view of the state, as the *Rodriguez* decision undergirded LULAC’s strategy to assert Mexican people’s whiteness as a way to avoid Jim Crow segregation and secure citizenship. LULAC, prior to *Salveterria*, continued to fight legal and bureaucratic battles regarding racial definition, both related to and independent of school segregation; LULAC particularly opposed changes in racial categorization listed on the census. While from

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<sup>241</sup> Ibid.

<sup>242</sup> There’s a particularly comprehensive list of “ethnic” organizations that emerge in the Houston barrios in Guadalupe San Miguel, *Brown, Not White*.

1900-1930 the U.S. Census Bureau officially classified those of Mexican descent as Caucasian, in 1930, the Census Bureau changed their classification and listed Mexican as a distinct racial grouping. LULAC's opposition to the category of Mexican played a role in the census bureau reverting back to Caucasian in 1940.<sup>243</sup> Yet shortly after winning that battle, LULAC needed to launch a similar effort with the Social Security Board which independently attempted to define Mexican Americans with a category other than white.<sup>244</sup> Combating the federal government's sorting and categorizing merely represents one such effort to fight labeling and discrimination, and even these efforts to include Mexican Americans among "other white races" did not prevent their practical segregation.

*Del Rio Independent School District vs. Salveterria* documents and challenges practices of racial segregation of Mexican American students. LULAC brought this class action suit against Del Rio school officials on behalf of Mexican American parents, alleging denial of equal protection under the constitution because of their relegation to a separate school. The case occurs because on January 7, 1930, the Del Rio Independent School District board of trustees ordered an election for the first of February to approve the issuance and sale of bonds to expand the district facilities. The district consisted of a high school and three elementary schools, one of which, the "West End" school, was also designated the "Mexican" school. This case did not dispute the validity or legality of these bonds but rather the already existing segregationist policies illuminated by their implementation. The case did not question the facilities themselves or instructional quality but simply the practice of maintaining separate schools. That this fourth facility

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<sup>243</sup> Clara E. Rodriguez, *Changing Race*, Critical America. (New York University Press, 2000); Drennon, "Social Relations Spatially Fixed"; Behnken, *Fighting Their Own Battles*.

<sup>244</sup> Behnken, *Fighting Their Own Battles*. 27.

had been used exclusively for educating elementary-age children of Mexican descent became clear during the trial.<sup>245</sup>

Called upon to explain the explicit segregation, the testimony of the district superintendent and one of the principals highlights the ambiguity of racial classification. While the school officials asserted that their decisions remained independent from race, their rationale both required a notion of racial fixity and relied on fundamental systemic inequities already impacting Mexican American children. Officials' rationale emphasized that because many Mexican American students engaged in "picking cotton or other farm work until the school terms are well advanced," they are "handicapped in their morale and work."<sup>246</sup> Further naming that language ability hampered "the overwhelming majority of [Mexican American] children," the officials maintained the non-racial connection and motive of such classification techniques. Removing issues of economic and linguistic power from race, and thus the case at hand, allowed for scant proof to justify these interventions or their applicability to all children of Mexican descent. The superintendent continued to explain his version of facts:

The truth is that most of the Spanish speaking children, by reason of the fact that they attend school only part of the year, are more greatly retarded, and I find from a check up we made again just yesterday that the difference in age in the given grade between the Anglo-Saxon child and the Spanish or Mexican child is anywhere from two to four years.

The superintendent's testimony continues with stereotypes and generalizations regarding Mexican American students, including noting that despite their deficits in both reading and mathematics, they excelled beyond their Anglo peers in art and music. Again, he expresses that there was nothing racial about such "facts." The superintendent testified, "I

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<sup>245</sup> Independent School Dist. v. Salvatierra, accessed August 24, 2014.

<sup>246</sup> Ibid.

was not actuated by a motive of segregation by reason of race or color in doing what I did. The whole proposition was from a standpoint of instruction and a fair opportunity of all children alike.”<sup>247</sup> This flimsy assertion did not hold up to questioning, as the superintendent further asserted that he did not send late arriving “American English” children over to the West End School. Richard Valencia highlights the impact of legal indeterminacy here as these two rationales, English language ability and late school entry due to farm working, are fundamentally about race and are evidence of “double standards, arbitrariness, and capriciousness.”<sup>248</sup>

The litigation centered on a group of taxpaying parents, including Jesus Salveterria, for whom the case is named. They contended that this exclusion of Mexican American students existed and that such separation itself constituted inequity as it denied students “the right and privilege of mingling with those of other races in the common enjoyment of identical school facilities, instruction, associations, and environment.”<sup>249</sup> Again, this case did not include any claims regarding the inequity of the facilities or instruction but hinged on the fundamental problem presented by separating students. Writing the opinion, Judge J. Smith asserts that the Del Rio school location bordering the republic of Mexico means that large sections of the population of Spanish and Mexican descent may be distinguished and designated as “the Mexican race,” in contrast to other white races. Judge Smith presents this assertion while lauding the community for its race relations.

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<sup>247</sup> Ibid.

<sup>248</sup> Richard R. Valencia, *Chicano Students and the Courts: The Mexican American Legal Struggle for Educational Equality* (NYU Press, 2008). 18.

<sup>249</sup> Independent School Dist. v. Salvatierra,.

It is to the credit of both races that, notwithstanding widely diverse racial characteristics, they dwell together in friendship, peace, and unity, and work amicably together for the common good and a common country. Racial dissensions, if any occur, are so rare and slight as to escape public notice, and we look in vain into the law books for evidences of such dissensions. It is a matter of pride and gratification in our great public educational system and its administration that the question of race segregation, as between Mexicans and other white races, has not heretofore found its way into the courts of the state, and therefore the decision of no Texas court is available in the disposition of the precise question presented here.<sup>250</sup>

The decision in the case elucidates how whiteness worked in this instance to minimize the grounds of the case itself, as the idea that “we looked in vain in the law books” ignores both the authorship of the law books and the systemic privilege afforded only to specific white citizens.

The Texas court of appeals later issued their decision in the *Del Rio Independent School District vs. Salvaterra* case.<sup>251</sup> In this case the court ruled that while school officials could not arbitrarily segregate “merely or solely because they are Mexicans,” they found that classifying students on instructional rationale sufficiently justified the separation. An interesting note embedded in Judge Smith’s opinion describes two instances in the case record where school officials denied Mexican children entry into classrooms they were entitled to attend, but that those “incidents occurred at a former term, are closed, and the school authorities, denying knowledge thereof, or responsibility there for, negative any intention or purpose of permitting a repetition of them.”<sup>252</sup> Here school officials’ lack of awareness provides sufficient evidence to arrest inquiry. This deference to the “science of teaching” causes Judge Smith to note the lack of necessary

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<sup>250</sup> Ibid.

<sup>251</sup> INDEPENDENT SCHOOL DIST. ET AL. v. SALVATIERRA ET AL. No. 8515 COURT OF APPEALS OF TEXAS 33 S.W.2d 790; 1930 Tex. App. LEXIS 1007.

<sup>252</sup> Independent School Dist. v. Salvaterra,.

remedy since school officials “may properly, reasonably, justly, or effectively grade, classify and assign the applicants.”<sup>253</sup> This strong defense of school officials led to the dissolution of the injunction holding up the construction serving as impetus for the case and set a precedent for the future.

George I. Sánchez notes that the *Salvatierra* ruling legalized the segregation of children of Mexican descent. Valencia calls *Salvatierra*’s justification for segregation of Mexican-American students “merely a smoke screen for the school board’s race-based opposition to mixing young Mexican American and White children in the same classrooms.”<sup>254</sup> The *Salvatierra* ruling challenged the commonplace segregation of Mexican American children, calling attention the inequity through this legal case, forcing a crisis. The crisis prompted a reassertion of white supremacy by simultaneously ignoring the evidence of racial inequity while legalizing the segregation of children on racial divisions grounded in social structures and subjective assessments. Dismayed by the decision, LULAC officials contemplated alternative courses of action.<sup>255</sup> The Supreme Court dismissed the appeal “for the want of jurisdiction.”<sup>256</sup> LULAC moved forward with alternate strategies and did not attempt litigation again until 1948’s *Delgado v. Bastrop Independent School District*.

The case of *Del Rio Independent School District v. Salveterria* creates a moment of crisis around the segregation of Mexican American students in the Texas public schools. This case provides a snapshot of circumstances and racial definitions at the time

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<sup>253</sup> Ibid.

<sup>254</sup> Valencia, *Chicano Students and the Courts*. 18.

<sup>255</sup> 80.

<sup>256</sup> *Salvatierra v. Independent School Dist.*, accessed August 24, 2014.

of its argumentation, a glimpse into the larger purview of Mexican American school segregation. This initial challenge to public school segregation marks a particular temporal moment in a location where tripartite segregation remains an ongoing reality in the face of racism defended as pedagogical practice/necessity. *Salveterria* also challenges notions of racial categorization in a system constituted by a black/white binary inconsistent with the lived experience of the citizens it governs. While only the segregation between white and “colored” students receives constitutional sanction, negotiating the term “colored” proves the key preoccupation in the case, as Texas’ statutes’ technical classification of Mexican Americans as members of “other white races” did not shield them from discrimination or segregation. That discrimination and segregation provides the conditions for further challenges to the system.

#### **GEORGE I. SANCHEZ’S MASTER’S THESIS**

George I. Sanchez became a professor of education at the University of Texas and remains well known for his civil right activism during his career. In particular he continued to study and challenge the ongoing segregation and unequal opportunities Mexican American students faced in schools.<sup>257</sup> Sanchez critiques Terman’s work early in his career, tackling the topic of I.Q. testing in his 1931 master’s thesis. Sanchez’s work calls out explicitly racialized impacts of such testing. Sanchez’s thesis, *A study of the Scores of Spanish-Speaking Children on Repeated Tests*, comes to a clear conclusion: “A number of factors, for example school training, language differences, and experience with

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<sup>257</sup> Carlos Kevin Blanton, *Lamar Series in Western History : George I. Sanchez : The Long Fight for Mexican American Integration* (New Haven, CT, USA: Yale University Press, 2015), <http://site.ebrary.com/lib/alltitles/docDetail.action?docID=11001386>.

tests, must be considered in interpreting the results of tests of Spanish-speaking children.”<sup>258</sup> His literature review cites several disparate studies each concluding that Mexican-American students as a group had a lower mental ability than their white classmates. The language and assessment used to draw these conclusions varied, but as Sanchez points out the conclusion stemmed from incomplete factors in interpreting test results.

Sanchez further cites other contemporaries challenging the assumption the test results could validate assumed racial inferiority or superiority. One such citation is Yoder’s 1928 review of studies on racial difference at length:

That the consensus of competent scientific thought, contemplating the inability of mental testers to define intelligence, the inadequacy of all attempts to take such factors as education, social status, and language into proper consideration and the deficiencies of testing conditions, finds no proof of racial inferiority or superiority and eliminates the usual methods of determining such standing from the field of scientific usefulness. <sup>259</sup>

Despite this sweeping indictment of the repeated conclusions of other scholars, Sanchez, in placing his scholarship in contemporary conversations, furthers his investigation contemplating the foundational beliefs of racial superiority and inferiority. Sanchez’s critique failed to stem the use of testing to classify and stratify students. The deliberate reassertion of white supremacy through standardized testing meant, as Gonzalez notes, “the educational experience for disproportionate numbers of Mexican children meant forced enrollment into slow-learner, educationally mentally retarded, and vocational education courses.”<sup>260</sup>

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<sup>258</sup> V.

<sup>259</sup> Yoder, D., “Present Status of the Question of Racial Differences,” *Journal of Ed. Psychology*, Vol. 19, 1928, p. 470 in George Isidore Sánchez, “A Study of the Scores of Spanish-Speaking Children on Repeated Tests” (Austin, Tex., 1931). 4.

<sup>260</sup> Gonzalez, *Chicano Education in the Era of Segregation*. 20.



Sanchez critiques school segregation and inequality throughout his career:

We need to look upon our American minorities objectively. When we do so, we will find that much that we think of as due to ethnic or racial differences are products of a state of mind, of a diseased state of mind, not that of the minority group. Jim Crowism—whether practiced against Negro, Jew, Mexican or Chinese—is a mass mental aberration, a disease of which we much be cured for our own sakes, if only because of enlightened self-interest. From my point of view, the so-called problem of American minorities is, in reality, the problem of the majority.

To treat a child to genteel segregation because he knows only Spanish is a frightening distortion of good intentions. Then, too, to attach the idea of deficiency and handicap to so beautiful and valuable a language as Spanish hardly fits in with modern educational thought and national policy. For those well-intentioned souls who have endorsed these programs one can only ask forgiveness, for they know not what they do.<sup>261</sup>

This critique highlights the logical fallacy and the overt racism of white scholars using such data to classify racial intelligence.

In an article published in 1932, Sanchez emphasizes, “because of the extent to which non-hereditary influences are involved in differences in test results, it seems advisable to refer to them as *group* differences rather than *racial* differences.”<sup>262</sup> Sanchez continues to dispute those scholars claiming that Spanish-speaking students’ inferior test scores provide sufficient evidence to draw conclusions about their racial inferiority. Without considering language and environmental factors, which Sanchez notes for many of the children studied is “easily inferior in its socio-economic and educational aspects” in relation to their English speaking counterparts, such conclusions remain patently false.

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<sup>261</sup> Blanton, *Lamar Series in Western History*.

<sup>262</sup> George Isidore Sánchez, *Group Differences and Spanish-Speaking Children; a Critical Review* (Wash., D.C., 1932).

Later in his career he also tackled the equalization of school funding.<sup>263</sup> Writing in 1939, George I. Sanchez argues for the equalization of funding, in service to the larger goal, noting, “Equalization strives for equity in educational opportunity.”<sup>264</sup> Each of these crises represents a formal challenge to racial segregation in the pursuit of educational equity. Each highlights the conditions of the public school system in a particular time and space. And ultimately, each contributes to the current incarnation of public education and the contemporary school-to-prison pipeline, a phenomenon reliant on racial segregation.

In the face of the continued segregation of Mexican American students, plaintiffs in *Delgado v. Bastrop Independent School District* charged the Central Texas community with segregating children of Mexican descent contrary to law.<sup>265</sup> *Delgado* continued the strategy of maintaining the fundamental whiteness of Mexican Americans. The strategy again brought success as the judges, citing the Fourteenth Amendment of the United States Constitution, ruled against the segregation of Mexican-American children because of their belonging to the “Caucasian” race. The ruling of the illegality of segregating Mexican-American students includes a caveat for non-English speaking first graders. Importantly, this win from a legal/definitional standpoint did not result in practical change for students. The *Delgado* ruling further led to the solidification of alternate strategies to sort and classify students.

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<sup>263</sup> George Isidore Sánchez, *The Equalization of Educational Opportunity-- Some Issues and Problems*, The University of New Mexico Bulletin. Education Series, v. 10, no. 1; whole no. 347 (Albuquerque: University of New Mexico Press, 1939).

<sup>264</sup> Ibid.

<sup>265</sup> United States, Minerva Delgado, and Bastrop Independent School District (Tex.), eds., *Minerva Delgado, et Al., v. Bastrop Independent School District of Bastrop County, Texas, et Al. Civil Action No. 388, United States District Court, Western District of Texas, Austin, Texas, June 15, 1948; Final Judgment (abstract of Principal Features)* (n.p, 1948).

Following the case, the Texas Education Agency released its “Statement of Policy Pertaining to Segregation of Latin-American Children.” While acknowledging the illegality of segregation, the statement emphasizes local control in dealing with infractions, leaving matters up to local schools boards:

To this end that Board deems it proper, in cases where it is alleged there exists a practice of segregating Latin-American children from Anglo-American children, that the local school boards of school trustees be given the opportunity to eliminate such segregation prior to the bringing of such cases to the Commissioner of Education, where such matters would be handled only on the basis of appeal.<sup>266</sup>

Writing on the educational considerations associated with the ruling, George I. Sanchez articulates multiple concerns following the ruling, describing discriminatory practices able to continue despite the ruling: grouping students homogenously, deliberate gerrymandering, maintaining neighborhood schools, and supposed “free choice” plans for student enrollment.

Sanchez also addresses that the unquestionable illegality of segregation precludes its acceptance, even as a matter of custom. He writes:

Oftentimes the segregation is simply a product of long standing custom—a custom sometimes approved and encouraged by the Spanish-speaking peoples themselves. Nonetheless, whether by “custom, usages, and practices” or regulations, segregation is illegal. The current or past acquiescence of the Spanish-speaking people is irrelevant. People cannot choose to give up their constitutional rights!<sup>267</sup>

While Sanchez acknowledges that homogeneous grouping can constitute a sound instructional practice in the classroom, he offers both caution and a common sense assessment.

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<sup>266</sup> George Isidore Sánchez, *Concerning Segregation of Spanish-Speaking Children in the Public Schools*, Inter-American Education: Occasional Papers 9 (Austin: University of Texas, 1951).

<sup>267</sup> Ibid. p. 16.

It seems safe to conclude that if all the children in the lower half (the “slow section”) of a given grade are Spanish-speaking, and are placed in a separate classroom, and all or nearly all of those in the upper half of that grade are “Anglos,” the arrangement is merely a subterfuge for the setting up of illegal separate classrooms for Spanish-speaking children.<sup>268</sup>

Additionally, he notes the problem of students engaged in farm labor entering school late and here again emphasizes that despite the desire to make separate provisions, “they cannot be segregated or offered an education that is not substantially that offered other children.”<sup>269</sup> Sanchez covers several other practices typically used to maintain segregation without a formal administrative aspect. These practices, described here following the *Delgado* ruling, presage practices used to maintain and reestablish segregation following *Brown*. Gerrymandering, neighborhood schools, and “free choice” recall the fundamental role of geographic boundaries in maintaining segregation. Sanchez also cautions that gerrymandering can be accomplished in ways other than simply drawing boundary lines between two school zones, and his explanation evidences how the practice functions.

School authorities may create more school zones than there are schools, carefully bounding one zone so as to include all or the majority of the Spanish-speaking children, and then ruling that the “Anglo” school is the school to be attended by the children of all zones except the one populated by Spanish-speaking people (where the traditional “Mexican” school is located).<sup>270</sup>

Noting neighborhood schools’ intimate connection to gerrymandering. “Some communities achieve segregation by establishing schools whose zone lines coincide with ethnic boundaries. Such zone lines, by following ‘natural barriers’ (a highway, railroad tracks, an arroyo, etc.), effectively divide the districts into ‘Mexican town’ and ‘the white

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<sup>268</sup> Ibid. p.16-17.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid. p.19.

section.”” Sanchez cautions that “free choice” among neighborhood schools does not actually mean free choice for students. “Because of custom or other indirect pressure, however, one of the two schools is attended only by children of Mexican descent.” This practices allows school officials to operate segregated schools without regulating the practice.

One such district attempting to maintain segregation under the guise of “free choice” was in fact the Del Rio school system discussed in the previous section. Accusations of segregation through “free choice” led to an investigation of the district by the Texas State Superintendent of Public Instruction in 1949, at the time L. A. Woods. Woods investigation confirmed the charge and concluded that the Del Rio ISD was segregating children of Mexican descent; his ruling removed accreditation from the district. Despite the reprimand, school officials ignored the ruling and Sanchez describes what happened next.

However, on the opening day of the school (in September), a large number of “Mexican” children “chose” to enroll in the “Anglo” school. By doing so, they demonstrated what Superintendent Woods had concluded: namely, that “free choice” is unworkable. The “Anglo” school could not accommodate the children, and the school authorities were thus forced to do what the State Superintendent had advised from the very beginning: *all* the children in certain grades were assigned to one school, and *all* the children in the remaining grades were assigned to the other school.<sup>271</sup>

Here, despite the remedy imposed by the State Superintendent, no change occurred until the situation became unworkable for the district itself.

Sanchez also offers a variety of additional considerations including English *versus* education, the learning environment, language achievement, homogenous grouping, separate housing, lack of uniformity, and arbitrary segregation. He reiterates the harms of

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<sup>271</sup> Ibid.

segregation: “I am of the firm conviction that one of the reasons why more Spanish-name children do not go on through grade school, high school, and college is because of the discouragement arising from the practice of segregation.”<sup>272</sup> Further emphasizing, “Segregated schools are almost invariably inferior schools,” Sanchez grounds his argument in the fundamental mismatch between segregation and American educational principles.<sup>273</sup> “Emphasis should be placed on the fact that, where Spanish-speaking children are segregated in the public schools, *state school officials are participants* in that segregation.”<sup>274</sup> Ultimately, this ruling against the acceptability of segregation by national origin led testing to be considered a more pedagogically sound determinate of separation within schools. Such assessments further justified separate classes on the same campus, an important innovation for contemporary segregation after the United States Supreme Court eliminated the legality of explicit racial segregation.

While attempts to combat segregation often do so as a means to further equity, integration does not necessarily mean educational equity, and equity proves a deceptively simple concept. Historically such debates about segregation prove a political bind for people of color precisely because of this duality: segregation ensures inequity, but integration does not ensure equity. W. E. B. Du Bois’s 1935 essay, “Does the Negro Need Separate Schools,” argues that racial prejudice limited the possibility of black

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<sup>272</sup> Ibid. 38.

<sup>273</sup> Part of Sanchez’s argument here however rests on his assessment that the principles and ideals that the American public school is founded on include “the inculcation of democratic ideas and habits, the whole notion of a unitary schools, the idea of Americanism and Americanization.” Sanchez continues, “the genius of our powers of assimilation, and of our powers of Americanization, lies largely in our public school—a school that is indeed a melting pot and a training ground for democracy.” His faith in the American democratic system precludes a pessimistic analysis, one found here, that creating second class citizens comprises a key part of the American public school project. P. 38 in Ibid.

<sup>274</sup> Ibid.

students getting a proper education in a predominantly white setting.<sup>275</sup> DuBois further uses a Texas anecdote to demonstrate the absurdity of assuming that white educator and policy makers would reinforce notions of equity. He wrote, “I remember once, in Texas, reading in a high-school textbook for colored students, the one anecdote given concerning Abraham Lincoln: he was pictured as chasing Negro thieves all night through the woods from his Mississippi flatboat!”<sup>276</sup> Demonstrating the overt racism characterizing white controlled education supports DuBois’ larger argument that desegregation proves insufficient to remedy deeply embedded societal racism. DuBois sums up his argument as follows:

Theoretically, the Negro needs neither segregated schools nor mixed schools. What he needs is Education. What he must remember is that there is no magic, either in mixed schools or in segregated schools. A mixed school with poor and unsympathetic teachers, with hostile public opinion, no teaching of truth concerning black folk, is bad. A segregated school with ignorant placeholders, inadequate equipment, poor salaries, and wretched housing, is equally bad. Other things being equal, the mixed school is the broader more natural basis for the education of all youth. It gives wider contacts; it inspires greater self-confidence; and suppresses the inferiority complex. But other things seldom are equal, and in that case, Sympathy, Knowledge, and the Truth, outweigh all that the mixed school can offer.<sup>277</sup>

Other scholars studying segregation in public schools echo DuBois’ comments.<sup>278</sup> That said, given the necessity of integration into schooling as a proxy/prerequisite for

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<sup>275</sup> W. E. Burghardt Du Bois, “Does the Negro Need Separate Schools?,” *The Journal of Negro Education* 4, no. 3 (1935): 328–35, doi:10.2307/2291871.

<sup>276</sup> Ibid.

<sup>277</sup> Ibid.

<sup>278</sup> While there is a substantial body of literature making this point, one related source includes a master’s thesis written in 1971 by Nancy Kuhr and supervised by George I. Sanchez examined segregated schools in Texas from 1876 to 1940. Kuhr concludes, “The emotional climate generated by the prejudices of the dominant white majority did not permit equality of opportunity, but the separated schools were a hidden means to personal and group development.” Nancy Jane Newton Kuhr, “Segregated Public Schools in Texas, 1876-1940” 1971.

inclusion in the larger citizenry, integration often serves a primary objective of various movements for equity.

### SHIFTING AND INSTITUTIONALIZING SPECIAL EDUCATION

While Mexican American activists fought for full societal inclusion, disability scholars and activists as early as the 1930s also challenged education professionals to shift the field from its deficit-based paradigm, though they had little success altering the prevailing ideology. Osgood quotes the findings of the White House Conference Committee on the Handicapped after their 1930 meeting; “Special education is a school administrative device by means of which children who deviate from the normal . . . can be given the kind of training they require under more favorable conditions.”<sup>279</sup> This conference, preceding Foucault’s work by decades, emphasizes the explicit disciplinary power of the normal and its fundamental role in shaping notions of disability and belonging. This explicit segregation of students with disabilities, either in institutions or separate classrooms, continued even as recurring contests over the meaning and implementation of special education occurred. In one example, Goodwin Watson published an essay, “The Exceptional Child As a Neglected Resource,” in the 1938 issue of *Childhood Education* challenging education professionals to shift the field’s deficit-based paradigm.<sup>280</sup>

Special education in Texas formally began across the state in 1945 as a result of the enactment of Senate Bill Number 38.<sup>281</sup> Sponsored by the Texas society for Crippled

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<sup>279</sup> Osgood, *The History of Special Education*. 65-66.

<sup>280</sup> *Ibid.* 80.

<sup>281</sup> Stibick, “Equipment and Facilities of Certain Public School Special Education Programs in Texas.” However, some individual school districts established Special Educations prior to the statewide mandate.



Children, the State Board of Education defined “exceptional child” as “Any child of educable mind whose bodily functions or members are so impaired that he cannot be safely or adequately educated in the regular classes of the public schools without the provisions of special services.”<sup>282</sup> The Gilmer-Aikin Bill, Senate Bill No. 116 of the 51<sup>st</sup> Legislature, eventually placed the program under the newly created Texas Education Agency.<sup>283</sup> The Gilmer-Aikin laws, named after long-time education-oriented senators Claude Gilmer and A. M. Aikin, created the framework for modern public education in Texas, guaranteeing 9 months of education, a minimum of 175 days, for 12 years.<sup>284</sup> The bill also includes language specifying that children deemed eligible for the State School for the Deaf, the Blind or the Feeble-minded could not be classified as “exceptional children.”<sup>285</sup>

From 1945-1952 the legislature continue to define, refine, and re-define what they meant by special services for exceptional children.<sup>286</sup> In 1951 the legislature expanded

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For example, Austin started a “special education program for handicapped children” in 1943 as noted in 1948’s Austin (Tex.), Seven Problems Facing the Austin Public Schools.

<sup>282</sup> Hoyt Ellsworth Robinson, *Special Education for Exceptional Children in Texas, 1948* (Austin: Division of Special Education, State Dept. of Education, 1948).

<sup>283</sup> Senate Bill no. 116 passed by the 51st legislature.

<sup>284</sup> Campbell, *Gone to Texas*.

<sup>285</sup> The Gilmer-Aikin laws also involve comprehensive school-reform, including changes to school financing and teacher compensation. One research lead that I did not pursue includes interviews with Claud Gilmer and A. M. Aikin in the oral history archives at the Dolph Briscoe Center for American History. Oral History of Education Records, 1948-1983, Dolph Briscoe Center for American History, The University of Texas at Austin. The Briscoe Center also has Gilmer-Aikin Committee, Gilmer-Aikin Records, documenting the research of the Gilmer-Aikin Committee on education for consideration on Senate Bills 115, 116, and 117 during the 51st legislature.

<sup>286</sup> While I specifically discuss Texas in this section, Dennis Chicon argues that the late 1950s and early 1960s constitutes “a revolution in the area of special education,” given the increasing public awareness and allocation of resources. Dennis E. Chicon, “Educability and Education: Filling the Cracks in Service Provision Responsibility under the Education for All Handicapped Children Act of 1975,” *Ohio State Law Journal* 48 (1987): 1134.

the special education designation and updated the definition of “exceptional children” to read, “‘Exceptional Children,’ wherever used, will be construed to mean physically handicapped children and mentally retarded children.”<sup>287</sup> The bills further defined “mentally retarded” children: “Any child of educable mind whose mental condition is such that he cannot be adequately educated in the regular classes of the public schools without the provision of special services.” The 52<sup>nd</sup> legislature, in Senate Bills 44 and 81, deleted the language providing special education services for those children eligible for the State Schools for the Feeble-minded. Taken together, these legislative moves expanded the Texas public school system substantially. Texas Education Agency (TEA) data summarizing the development of special education noted growth from 25 school units and 1,339 pupils in the 1945-46 school year to 145 schools units and 6,821 pupils by 1952.<sup>288</sup> The expansion of special education further varied by program. While studies examining the actual state of classrooms noted substantial differences in materials and content, early TEA guidance provides a glimpse into proposed supports.

In 1948 the Texas State Department of Education Division of Special Education released a “Teacher’s Guide to Special Education for Exceptional Children.” A foreword written by the State Superintendent of Public Instruction L. A. Woods explains the motivation behind the book’s publication; “At the insistence of the Texas Society for Crippled Children, the Forty-ninth Legislature, under the leadership of Senator G. C. Morris and Representative Will Smith, placed a responsibility on the State Department of

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<sup>287</sup> In Marguerite Nelson Stibick, “Equipment and Facilities of Certain Public School Special Education Programs in Texas” (1953). Marguerite Nelson Stibick, “Equipment and Facilities of Certain Public School Special Education Programs in Texas” (1953) referring to the 52nd Legislatures amendments to Senate Bills No. 116 and 123 in April of 1951.

<sup>288</sup> Stibick, “Equipment and Facilities of Certain Public School Special Education Programs in Texas.”

Education to help provide special educational services for the exceptional children of this state.”<sup>289</sup>

The guide’s preface explains its intent:

We hope to help the regular classroom teacher who has some handicapped children in the room but not a sufficient number to make possible a full program of special education. It is hoped that any alert, ambitious teacher with a degree can profitably use some of the suggestions contained herein for the benefit of the handicapped.<sup>290</sup>

The authors, spearheaded by the Director of Special Education H. E. Robinson, anticipate some potential opposition to their work and include a caveat in the preface; “In our effort to be specific, we may have permitted some material to be included that might appear controversial.”<sup>291</sup> The controversy at times is that such programs have merit to exist. This guide begins with an extensive definition regarding the eligibility of pupils, worth reprinting here to demonstrate the specific institutional meaning at this moment in Texas.

The term “exceptional children” is defined by law to include “any child of educable mind whose bodily functions or members are so impaired that he cannot be safely or adequately educated in the regular classes of the public schools without the provision of special services.” To be eligible for special classes, children must have a minimum general mental ability equivalent to that of a child with a Stanford-Binet intelligence quotient of 50-70, and in no case is the mental age of a child to be less than six. This is not a program for the feeble-minded.<sup>292</sup>

In this moment, the usage of feeble-minded refers to a more specific range of students, as assessed by test scores, rather than Yoakum’s more malleable umbrella category. Here those classifications covered by special education include children with deficient hearing,

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<sup>289</sup> Hoyt Ellsworth Robinson, *Teacher’s Guide to Special Education for Exceptional Children* (Austin: Division of Special education. State Dept. of Education, 1948). iii.

<sup>290</sup> Ibid.

<sup>291</sup> Ibid.

<sup>292</sup> Ibid. 1.

deficient vision, orthopedic handicaps, speech disorders, lowered vitality, and nervous disorders. The report further emphasizes that in addition to these six types of exceptional children covered by the law, “there are other types of exceptional children not provided for under the law but whose condition is such that it is urgent that local school authorities make special provision for their educational welfare.” These categories include the mentally retarded, the mentally gifted, the socially maladjusted, the handicapped because of low socio-economic status, and the handicapped because of a foreign language.<sup>293</sup> The report does not delve further into specifying what constitutes belonging in these groups or what their educational provisions might comprise.

A directive to teachers among the “steps to be followed,” prompt them to “work out your philosophy as to Special Education.” This directive emphasizes the need for teaching personnel to be acquainted with the program but also concerns itself with public perception of said program; “the public must be convinced that it has value and is not a program of charity. It is based on sound economic, social, and educational principles.”<sup>294</sup> The guide also includes the qualifications for special education teachers, with coursework including a survey course and three of seven options, including “Intelligence Tests and Individual Differences,” “Mental Hygiene,” and “Educational Tests, Including Those of Aptitude, Achievement, and Personality.”<sup>295</sup> Here the emphasis on classification and diagnosis as a substantial part of the pedagogical training for special education teachers evidences their primacy in establishing the category and practice.

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<sup>293</sup> Ibid. 2-3.

<sup>294</sup> Ibid. 3.

<sup>295</sup> Ibid. 4-5.

A discussion of “What is Education?” offers a definition: “education is what remains after one has forgotten what was learned from books.” The guide offers that the learning should be a balance of five elements: a skill suitable for a job, a knowledge of self, “the habit of good judgment in use of leisure time and freedom,” “a desirable attitude toward the home, other races and nations,” and “an appreciation for the good, the beautiful, and the true.”<sup>296</sup> The guide further explains, “The ultimate goal of the last three traits is the maintenance of the American attitude toward the home, the church, and the school, together with an intelligent support of a representative democracy.”<sup>297</sup> This patriotic orientation alludes to both the subjectivity of facts and the extreme outcome of eugenicist thinking in World War II; “Truth rather than fact is the most important factor in such a philosophy of education, for it is possible to learn the wrong facts and thus produce social, economic, and political crises.” This sentence precedes a note that “Germany and Japan taught the wrong facts rather than truth, and this brought about our recent World War.”<sup>298</sup>

Following the guide’s publication, special education in Texas continued to evolve. Further changes include a transformation in naming conventions, as HB 245 from the 51st Regular Session in 1949, changes “Eleemosynary Institutions” to “Texas State Hospitals and Special Schools.” The bill includes some rationale for the legislations immediate implementation, evidencing the stigma associated with the label: “The fact that at the present time the name “Eleemosynary Institutions” is detrimental to the welfare of many patients and students committed and/or admitted to the State hospitals and

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<sup>296</sup> Ibid. 14-16.

<sup>297</sup> Ibid. 16.

<sup>298</sup> Ibid. 16.

schools.” Only two-years later the 1951 legislative session provides for special education services to educable mentally retarded children, a charge also put under the jurisdiction of the Texas Education Agency.<sup>299</sup> This expansion and institutionalization increases the scope of services available to students yet continues to rely on the same classification schemes. Scholars and practitioners sought more change in the following years.

The State Board of Education recognizes that it has the responsibility of at all times administering the public school program of Texas in accordance with constitutional and statutory authority. Furthermore, the Board is fully aware that the intent and purpose of the law is that the public schools of Texas be operated so as to provide equal educational opportunity for all children and that any form of segregation not authorized by the constitution and laws should be eliminated. The Board also recognizes that the segregation of children of Latin-American descent from Anglo-American children in the public school system is contrary to law.<sup>300</sup>

In sum, segregation is a key concept at an essential moment of political expansion and economic growth and investment in public schools. Changes to the overarching policy cannot dismantle many essential components undergirding segregation, including the diffuse and malleable commitment to white supremacy, as the specific spatial and racial logics applied to school districts throughout the state ensure that challenges to segregation focus specifically on districts rather than the state as a whole. While the Civil Rights movement and the oft cited *Brown vs. Board of Education* decision ended the legality of explicit segregation within the public school system, the court’s ambivalence toward a timeline for action coupled with prevailing racist practices failed to address the

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<sup>299</sup> Arthur S. Hill, “Legislation Affecting Special Education since 1949,” *Exceptional Children* 18 (December 1951): 65. Also in 1951 the TEA Division of Special Education published “A guide for organizing and providing special education for exceptional children,” which outlines suggested equipment for “classes for the mentally retarded.” All of the material listed, including a hot plate, an electric iron, sewing machines, and workbenches, further the suggested instruction of “manual activities of educational value.” Texas Education Agency, ed., *A Guide for Organizing and Providing Special Education for Exceptional Children*, Texas. Central Education Agency. Bulletin 520 (Austin, 1951).

<sup>300</sup> Sánchez, *Concerning Segregation of Spanish-Speaking Children in the Public Schools*.

root of the problem: a diffuse and deep seated commitment to the benefits of white supremacy in American society.

## Chapter 4: Massive Resistance and Revised Racial Debilitation, 1954-1979

There are perhaps five million children in the United States who are colored.

There are close to five million other children who will be directly affected by this decision. I am not speaking of the majority of white children, many of whom have been undoubtedly injured spiritually by the philosophy and practice of segregation. I am speaking of disabled children, who are "different," not because of color but because of blindness, deafness; because they are crippled, have cerebral palsy, or speech defects, or epilepsy; or are what we call "retarded."

These children we have also segregated.... All of these children, some with real disabilities, others with the artificial disability of color, are affected by this great decision.<sup>301</sup>

Author and social critic Lillian Smith's 1954 *New York Times* Letter to the Editor following the Supreme Court's ruling in *Brown v. Board of Education* initially highlights the damage racial segregation wrought on the public schools. While the colored students she refers to in the opening line are black students, she switches to discussing the potential impact of *Brown* on students with disabilities. Furthermore, Smith highlights the intersection between racial and ability segregation in the construction and operation of the public school system with this phrase "the artificial disability of color." Yet Smith's analysis also raises questions. What distinguishes real from artificial disabilities? How were children impacted by the *Brown* decision? This chapter particularly examines the transformation of debilitation following the *Brown* decision. The movement to secure an adequate education for handicapped children found a firmer basis in the civil rights movements of the 1950s and 60s, yet reforms on special education unevenly grappled

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<sup>301</sup> Lillian Smith, "Ruling on Schools Hailed: Decision Against Segregation Said to Benefit All Children," *New York Times*, June 6, 1954, sec. Review of the Week Editorial Correspondence Week-End Cables Editorials Special Articles - Science Letter - Education.



with race.<sup>302</sup> Forced integration led to a variety of new mechanisms designed to protect, preserve, and police whiteness; among these disciplinary practices increased physical punishment, further special education categorization, and the development of new methods of accomplishing de facto racial segregation foreshadow the emergence of the school to prison pipeline. The positive intentionality of those seeking to reform special education could not grapple with the explicit racism of actors who, following the Supreme Court's 1954 ruling in *Brown v. Board of Education*, increased the use of psychological metrics to maintain segregation. In just one statistical example, from 1955-1956 in Washington D.C. special education classes in schools doubled in enrollment, with African American students comprising over 77 percent of those classes. Maintaining segregated schools through institutional mechanisms of ability grouping marks a comprehensive response to integration through the 1960s, when legal challenges began to question such systems.

While *Del Rio Independent School District v. Salvatierra* constitutes an initial foray into class action suits challenging the legality of the segregation of Mexican American students, *Brown v. Board of Education* represents the culmination of African American efforts to fight school segregation in the nation's highest court. *Brown* presents a high profile moment in this prolonged fight against segregation in society and in the public schools. While many scholars analyze the case itself as well as the research, activism, and litigation leading up to its conclusion, the case represents a key moment of crisis and potential reform to the system.<sup>303</sup> Here, as with *Salvatierra*, concerned citizens

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<sup>302</sup> Erwin L. Levine, *PL94-142: An Act of Congress* (New York : London: Macmillan Pub. Co. ; Collier Macmillan Publishers, 1981).

<sup>303</sup> For a very incomplete bibliography see Derrick A. Bell, ed., *Shades of Brown: New Perspectives on School Desegregation* (New York: Teachers College Press, Columbia University, 1980); *Brown V. Board of Education: A Brief History with Documents* (Boston: Bedford/St. Martin's, 1998); Dorinda Carter Andrews, Stella M. Flores, and Richard Reddick, *Legacies of Brown*, vol. no. 40., Harvard Educational

articulate the theoretical mismatch between the supposed privileges of citizenship and the lived reality of its impact on citizens ostensibly included in the body politic. The long path to *Brown* coupled with its temporally ambiguous decree, “all deliberate speed,” meant that its implementation spanned decades, and while the jurisdiction of the Supreme Court unquestioningly encompasses Texas, several propositions attempted to question this relationship in their efforts to stall or avoid desegregation.

*Brown* is a crucial legal success and the culmination of the work of many committed individuals and groups who worked to challenge the embedded doctrine of “separate but equal” established in 1896’s *Plessy v. Ferguson*. Even getting this case before the Supreme Court required a sustained legal strategy carried out in the lower courts and the ongoing refinement of legal arguments from other cases regarding racial segregation. Richard Kluger’s *Simple Justice* chronicles the story of the case in extensive, narrative detail.<sup>304</sup> In his work, Kluger chronicles the stories of people involved in all aspects of the case, including those whose overt commitments to white supremacy and segregation made the work necessary. Kluger also outlines the number of cases that precede the Supreme Court’s decision to hear *Brown*—cases that refined the legal strategy and at times provided small victories themselves.

The case of *Sweatt v. Painter* represents a long fought victory for Thurgood Marshall, the NAACP, and desegregation. Initially argued in Austin, Marshall’s strategy

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Review. (Harvard Educational Review, 2004); Richard Kluger, *Simple Justice: The History of Brown V. Board of Education and Black America’s Struggle for Equality*, Rev. and expanded ed (New York: Knopf, 2004); Sean F. Reardon et al., “Brown Fades: The End of Court-Ordered School Desegregation and the Resegregation of American Public Schools,” *Journal of Policy Analysis and Management* 31, no. 4 (October 1, 2012): 876–904; Gary Orfield and Harvard Project on School Desegregation, *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education* (New York: New Press: Distributed by W.W. Norton & Company, 1996).

<sup>304</sup> Kluger, *Simple Justice*.

in the case involved demonstrating state-imposed racial segregation proved both “scientifically unjustifiable and socially destructive.”<sup>305</sup> To make this argument, Marshall called Robert Redfield, the chair of anthropology at the University of Chicago, who at the time had studied racial differences for two decades. When the judge attempted to foreclose Marshall’s line of questioning, Marshall plainly stated the need to examine the reasonableness of segregation statutes in Texas, noting:

There is no understandable factual basis for classification by race, and under a long line of decisions by the Supreme Court, not on the question of Negroes, but on the Fourteenth Amendment, all courts agree that if there is no rational basis for the classification, it is flat in the teeth of the Fourteenth Amendment.<sup>306</sup>

Redfield’s testimony further argued against the racial ability characterizations leveled as justifications for segregation, highlighting another moment of confluence between discourses of race and ability. Redfield reinforced the fictive differences in learning ability between the races, explaining that scholars in the field who started with the presumption that “inherent differences in intellectual ability or capacity to learn existed between Negroes and whites” became slowly and convincingly compelled “to come to the opposite conclusion.”<sup>307</sup> Redfield continued to argue that segregation itself proved detrimental to students of both races noting, “it intensifies suspicion and distrust between Negroes and whites, and suspicion and distrust are not favorable conditions either for the acquisition and conduct of an education, or for the discharge of the duties of a citizen.”<sup>308</sup> While the initial court ruled against Sweatt, nearly three years later the Supreme Court

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<sup>305</sup> Ibid. 263.

<sup>306</sup> Marshall quoted in Ibid. 263.

<sup>307</sup> Quoted in Ibid. 263.

<sup>308</sup> Ibid. Kluger further tells the tale of how, during testimony in the case, a white police officer segregated the audience to make more room for whites.

ordered Heman Sweatt's admittance to the University of Texas Law School, the first time the Supreme Court ordered admittance based on recognized inequity.<sup>309</sup> Still, the case did not fundamentally challenge, and in many ways upheld, the separate-but-equal doctrine of *Plessy*, given that the court merely found the "but-equal" part lacking.

Looking for a way to fight the fundamental basis of segregation led Marshall and other top attorneys for the NAACP to Kenneth B. Clark, a young social psychologist and black assistant professor at City College of New York. Advised that proving school segregation itself causes damage to black children would be essential to the case, NAACP lawyer Robert Carter sought evidence to support the fundamental harm wrought by segregation. Carter's research led him to Clark's work—work itself started by his wife Mamie Clark's research into the effects of race on the self-identity of black school children. The Clarks devised the now well-known doll test, which demonstrated the extent of self-rejection in startlingly young black children. While the Clarks weren't the only researchers to conduct such tests, Robert Clark joined Marshall and Carter to argue *Briggs v. Elliott* in South Carolina.<sup>310</sup> In attempting to isolate the psychological damage of school segregation proved problematic, the impact of such practices on youth proved clear. Clark, calm and clear on the stand, discussed the impact of discrimination, prejudice, and segregation—purposefully refusing to isolate school segregation—on black children. Clark stated "the essence of this detrimental effect is a confusion in the child's concept of his own self-esteem—basic feelings of inferiority, conflict, confusion in his self-image, resentment, hostility towards himself, hostility towards whites . . ."<sup>311</sup>

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<sup>309</sup> Ibid. 281.

<sup>310</sup> Ibid. Kluger also described the commissioned report *Prejudice and Your Child* which further cited the research of Marian J. Radke and Helen G. Trager, whose article "Children's Perceptions of the Social Roles of Negroes and Whites" appeared in the *Journal of Psychology* in 1950.

<sup>311</sup> Ibid. 353.

Kenneth Clark himself anticipated the criticism that indeed came following his testimony in South Carolina, yet his testimony laid important foundations, as Clark's involvement in the case rallied other scholars to testify. David Krech, co-author of the 1948 textbook *Theory and Problems of Social Psychology*, also testified explaining that "by defining people in terms of race . . . that law promoted racial prejudice." Krech's testimony got directly to the point: "My opinion is that legal segregation of education is probably the single most important factor to wreak harmful effect on the emotional, physical and financial status of the Negro child."<sup>312</sup> Additional testimony in the case emphasized the blatant inequity in the facilities and educational conditions for white and black children. The decision handed down denied the plea for abolishing segregation but did direct the defendants to equalize the facilities and report back to the court. Fervent anti-segregationist Judge J. Waties Waring filed a vigorous twenty-page dissent in the case. He wrote:

. . . [S]egregation in education can never produce equality and . . . is an evil that must be eradicated. This case presents the matter clearly for adjudication, and I am of the opinion that all of the legal guideposts, expert testimony, common sense and reason point unerringly to the conclusion that the system of segregation in education adopted and practiced in the state of South Carolina must go and must go now.

*Segregation is per se inequality.*<sup>313</sup>

These prior legal attempts demonstrated both roadblocks and pathways for the NAACP and others working to continue dismantling the legal foundation of segregation.

*Brown v. Board of Education of Topeka* itself consists of a collection of cases and injustices, and Kluger tells each tale. Not only did the Brown family play a minor role in

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<sup>312</sup> Ibid. 362.

<sup>313</sup> Ibid. 3

the Topeka case, the case itself was one of five state school-segregation cases headed for appeal. In December of 1952 the nine Supreme Court justices discussed their inclinations towards the school-segregation cases, ultimately taking the case. The court posed a series of questions relevant to all five cases in preparation for their upcoming place on the docket.<sup>314</sup> Drawing upon the work of enlisted scholars, the brief before the court straightforwardly explains the injustices of segregation.

. . . Segregation was designed to ensure inequality—to discriminate on account of race and color—and the separate but equal doctrine accommodated the Constitution to that purpose. Separate but equal is a legal fiction. There never was and never will be any separate equality. Our Constitution cannot be used to sustain ideologies and practices which we as people abhor.<sup>315</sup>

The arguments in the southern states' briefs merely assert that separate schools served "the best interests of both races" and that ending such an arrangement could harm "the general welfare" of the state. The evidence presented in the case again relied on the social sciences that helped continue to explain the overt harm segregation caused black students.

Chief Justice Earl Warren wrote the opinion of the court, published on May 17, 1954. In this decision, Warren expounds on the value of education for full citizenship and participation in society:

Today education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment. In these days, it is doubtful that any child may

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<sup>314</sup> Ibid. 619. The questions or fully reproduced in Kluger's work.

<sup>315</sup> Quoted in Ibid. 649.

reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.<sup>316</sup>

Such reasoning leads the court to the question of whether or not racial segregation of children alone deprives children of the minority group equal educational opportunities—a question the court answers affirmatively. “Separate educational faculties are inherently unequal.”<sup>317</sup> This unambiguous assertion marks a key victory in this fight for equity in schools and the seeming resolution of a key crisis around segregation elevated to the highest court. The logic that led to the language of the decision demonstrates what Smith’s editorial emphasizes—the practice of segregation is fundamentally problematic. Despite the clear applicability to persons with disabilities that activists such as Smith drew, the court did not explicitly consider segregation beyond racial segregation.

Answering the second question that opens this chapter, to what extent did the ruling change the lived experience of students, requires further examination. Many scholars have since written about the failure of school desegregation despite the clear victory in this case, often hailed as ending school segregation.<sup>318</sup> Indeed, *Brown v. Board of Education* often appears in popular imagination and history as a definitive end to segregation. Waldo Martin describes *Brown* as both “a historical watershed and a powerful cultural symbol.”<sup>319</sup> However, the structure of local governance of United States public schools meant that *Brown*’s mandate, an unprecedented national intervention into schooling, had no apparatus for enforcement. In many places the decision prompted massive resistance. Even within the state of Texas, districts disparate

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<sup>316</sup> From Earl Warren’s decision reproduced in *Brown V. Board of Education*.

<sup>317</sup> Ibid.

<sup>318</sup> Ibid.; Kluger, *Simple Justice*; Bell, *Shades of Brown*.

<sup>319</sup> *Brown V. Board of Education*.

reactions evidence the emergence a clear trend attempting to circumvent the ruling throughout the state.

## MASSIVE RESISTANCE

One of the first Texas school districts affected by the *Brown v. Board* ruling was Mansfield, Texas, a farming town of about 15,000 people.<sup>320</sup> In 1955, Mansfield had approximately 700 school-aged white students and 60 school-aged black students. While the town maintained segregated elementary schools, black high school students “were required to ride a bus into nearby Fort Worth and then walk twenty blocks to the all-black I.M. Terrell High School.”<sup>321</sup> While initially Mansfield’s school board voted to allow 12 students to attend the local white high school, honoring the court’s decision, the board’s decision held little sway as both Mayor William Arnold “Bud” Halbet and Police Chief C.G. Harwell vowed that they would not allow the integration to happen.<sup>322</sup> The following year, the NAACP filed a lawsuit on behalf of three of the students denied entry to Mansfield High, which resulted in a federal district court in Fort Worth ruling in favor of the students. However, this ruling ultimately sent the decision back to the school board, who later appealed. Frustrated with the school board, Judge Joseph E. Estes issued

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<sup>320</sup> George N. Green, “Mansfield School Desegregation Incident,” June 15, 2010, <http://www.tshaonline.org/handbook/online/articles/jcm02>; Robyn Duff Ladino, *Desegregating Texas Schools: Eisenhower, Shivers, and the Crisis at Mansfield High*, 1st ed (Austin: University of Texas Press, 1996); D.L. Chandler, “White Mob Stops School Desegregation in Texas on This Day in 1956,” August 30, 2013, <http://newsone.com/2705161/mansfield-high-school-desegregation/>; John Howard Griffin and B’nai B’rith, *Mansfield, Texas: A Report of the Crisis Situation Resulting from Efforts to Desegregate the School System*, Field Reports on Desegregation in the South 4 (New York, N.Y: Anti-defamation League of B’nai B’rith, 1957); Irons, *Jim Crow’s Children*.

<sup>321</sup> Green, “Mansfield School Desegregation Incident.”

<sup>322</sup> Ibid.



a court order on August 27, 1956 that allowed for the admittance of the Black students.<sup>323</sup> These integration efforts enraged white citizens.<sup>324</sup> On August 30 and 31, 1956, local whites responded with violence as “an angry mob of 400 pro-segregationists took to the streets brandishing guns and racist signs.”<sup>325</sup> Reporters and observers were attacked as the mob yelled racist taunts and hung effigies of the three students.<sup>326</sup> One description notes that one of the effigies featured “a burned figure alongside a sign that read, ‘This Negro tried to enter the school.’”<sup>327</sup> Vigilantes further met all cars that entered the town, barring suspected integration sympathizers, and threatened to kill NAACP leaders and destroy the black section of town.<sup>328</sup>

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<sup>323</sup> Ibid.

<sup>324</sup> In the the same year, in response, the Mansfield branch of the NAACP filed a on behalf of T.M. Moody, Mark Moody, and John F. Lawson, three black high school students. “The campaign to desegregate Mansfield High School proved to be one of the most difficult challenges for the Texas NAACP. Parents, students, the NAACP, the White Citizens' Councils, and officials for the state of Texas were all involved in the struggle. Quoted in Houston, “The NAACP State Conference in Texas.”

<sup>325</sup> Chandler, “White Mob Stops School Desegregation in Texas on This Day in 1956.”

<sup>326</sup> Ibid.; Green, “Mansfield School Desegregation Incident.”

<sup>327</sup> Chandler, “White Mob Stops School Desegregation in Texas on This Day in 1956.”

<sup>328</sup> Green, “Mansfield School Desegregation Incident”; Behnken, *Fighting Their Own Battles*.



Figure 9: Student who registered at Mansfield High School observed racist writings on a car parked on the school grounds.<sup>329</sup>

Rather than support the students' integration, then Governor of Texas, Allan Shivers—who was simultaneously engaged in a tense reelection battle that involved attacking his liberal opponent who supported desegregation with racial epitaphs—sent the Texas Rangers to support the segregationists, “saying he was preserving the peace and preventing violence.”<sup>330</sup> The federal government took no action despite the open defiance of the Supreme Court's ruling. The students were redirected back to Fort Worth and the

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<sup>329</sup> Chandler, “White Mob Stops School Desegregation in Texas on This Day in 1956.”

<sup>330</sup> Marian Wright Edelman, “Southern School Desegregation, 1954-1973: A Judicial-Political Overview,” *The Annals of the American Academy of Political and Social Science* 407 (1973): 32–42; Chandler, “White Mob Stops School Desegregation in Texas on This Day in 1956.”

town continued to resist student integration defying the constitutional law until 1965.<sup>331</sup> Such open defiance inspired Arkansas Governor Faubus to ignore the Brown ruling in Little Rock.<sup>332</sup>

What happened in Mansfield was not an isolated incident. The federal court order “fueled ‘massive resistance’ against the implementation of school desegregation in Texas.”<sup>333</sup> White southerners seeking to preserve Jim Crow and white supremacy, and prevent public school integration, formed White Citizens' Councils (WCC).

Appealing primarily to rural middle-class and urban working-class whites, the WCC was considered to be a more “respectable” organization, compared to the Ku Klux Klan. Asserting that it was a non-profit and non-political organization, WCC leaders contended that the councils' activities would be conducted lawfully and they opposed any unlawful or violent means to maintain racial segregation.<sup>334</sup>

In 1955, the movement spread across Texas as white citizens of cities and towns organized councils, forming an umbrella coalition named the “Association of Texas Citizens' Councils.” Although mostly located in East Texas, these locations also included the large cities of Dallas and Fort Worth. Writing on the Citizens’ Council, Martin Luther King, Jr. notes that their members often included higher social and economic levels than the Klan offered as the groups offered “partial respectability.” He emphasized “their weapons of threat, intimidation, and boycott, are directed both against Negroes and

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<sup>331</sup> Chandler, “White Mob Stops School Desegregation in Texas on This Day in 1956.” This also occurred despite Black residents attempts to watch over the students using an armed community watch faction, also in Chandler. Chandler also notes, “To add insult to injury, the students had to find their own way to the school, and it was not as modern as Mansfield.”

<sup>332</sup> The story of the Little Rock Nine integrating Central High School often omits Governor Faubus completely shut down the Arkansas’ schools completely the year following the initial integration.

<sup>333</sup> Ramona Houston, “The NAACP State Conference in Texas: Intermediary and Catalyst for Change, 1937-1957,” *The Journal of African American History* 94, no. 4 (2009): 509–28.

<sup>334</sup> Ibid.

against any whites who stand for justice.”<sup>335</sup> In addition to maintaining segregation, the white councils worked to obtain support for the ‘interposition doctrine,’ which served as an intellectual justification for preventing ‘federal encroachment’ on states rights.’<sup>336</sup>

Also in 1955 a *New York Times* brief reports on how the Supreme Court of Texas needed to remind citizens that the federal Supreme Court ruling invalidated the segregation mandate embedded in the state constitution.<sup>337</sup> The Texas Supreme Court further warned of the illegality of such tactics as withholding funds from desegregated schools in an attempt to stop its progress, demonstrating the consideration of such tactics.<sup>338</sup> Yet the need of the Supreme Court of Texas to even respond to such a proposal causes the *Times* writer to contemplate what other strategies might emerge in an attempt to circumvent the ruling.<sup>339</sup> State lawmakers attempted to argue that Brown didn’t apply to Texas, because the suit did not explicitly name Texas schools.<sup>340</sup> “Texas might also

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<sup>335</sup> Martin Luther King and James Melvin Washington, *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, 1st HarperCollins pbk. ed (San Francisco: HarperSanFrancisco, 1991). 469.

<sup>336</sup> Houston, “THE NAACP STATE CONFERENCE IN TEXAS.”

<sup>337</sup> Arthur Krock, “In The Nation: Texas Is Informed of the Inevitable,” *New York Times* (1923-Current File), October 13, 1955, <http://search.proquest.com.ezproxy.lib.utexas.edu/news/docview/113297723/abstract/13A7EBCBD1043107EFD/115?accountid=7118>.

<sup>338</sup> While the Supreme Court of Texas issued this reminder, the constitutional segregation of Texas public schools remained on the books until 1969. Repeal came in 1969, during the legislature’s 61st Regular Session. The 61st Regular Session features an array of bills that amount to a comprehensive repeal of legal segregation. House Bills introduced included not only HB 250, repealing separate schools, but also bills repealing separate libraries, sleep facilities on trains, city ordinances, school census rolls, railway coaches, state park facilities, teachers meetings, racial classification of prisoners, and a bill related to repealing a 1925 penal code related to miscegenation. Attempting to even initiate the recommendations of Brown requires numerous legal interventions challenging Texas’ varied, and at times non-existent, attempts at desegregation, a problem suggested by this incredible delay in formal repeal.

<sup>339</sup> Krock, “In The Nation”; Gerald Steward McCorkle, *Desegregation and Busing in the Dallas Independent School District* (University of Texas at Arlington, 2006).

<sup>340</sup> Andy Alford, “A Dream Deferred; The News in 1954 That Black and White Students Would Soon Attend the Same Schools Pulled the Plug on American Segregation. But Brown’s Legacy in Austin Has

turn to a proposal that is being sympathetically weighed in some other Southern states. This is to abolish public school and support the public funds with a 'private school system in which racial segregation is maintained.'"<sup>341</sup> Calls for privatization in direct response to a desegregation plan again demonstrate the extent to which the expansion of the concept of public to include non-white citizens proved unacceptable to key, white decision makers.

Following Texas' initial failed attempts to argue *Brown's* insufficient jurisdiction, Governor Shivers' appointed the Texas Advisory Committee on Segregation in the Public Schools on July 27, 1955. The governor requested the committee examine and offer solutions for what he identified as three major concerns: 1) preventing forced integration, 2) achieving maximum decentralization of school authority, and 3) "how the state may best assist local school districts in solving their problems."<sup>342</sup> The committee published the preliminary report on August 21, 1955, and the final "Report of the Legal and Legislative Subcommittee of the Texas Advisory Committee on Segregation in the Public Schools," in September of 1956.<sup>343</sup> This report offers a cogent explanation of white opposition to the *Brown* ruling. In particular, examining this text demonstrates how the governor explicitly sought to reassert white supremacy in the face of substantive challenge. The report opens by articulating a clear position on the Supreme Court's decisions:

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Largely Been One of Missed Opportunities.," *Austin American-Statesman (Texas)*, May 16, 2004, NEWS; Pg. A1.

<sup>341</sup> Krock, "In The Nation."

<sup>342</sup> Texas, *Report of the Legal and Legislative Subcommittee of the Texas Advisory Committee on Segregation in the Public Schools, September 1, 1956* ([Austin, Tex: s. n, 1956).

<sup>343</sup> Ibid.

Viewed in the light of established legal principles and precedence, it is the opinion of this subcommittee that the decision of the Supreme Court in the case of *Brown v. Board of Education of Topeka* is clearly wrong and judicially unsound in that the present court has re-interpreted the Constitution to accord with the personal views of the present members of the court in disregard of the prior interpretation of the Constitution so long and firmly established; and in so doing has diverted from the well understood rules of proper judicial function.

The committee's indictment of the decision continues as they outline specific, technical grievances with the court's decision. Among these include the explicit argument that the federal Supreme Court has no jurisdiction over the schools given its position as a function of the individual states. Additionally, the committee continues to argue that the Fourteenth Amendment has no impact on segregation, citing numerous legal cases as precedent with the phrase "as witness every decision on this question for many decades prior to 1954."<sup>344</sup> The scathing assessment of the court's decision continues, as the authors both argue that the *Brown* decision undermines constitutional government and the "traditional process of judicial review."<sup>345</sup>

Part of the assault on the legitimacy of the *Brown* decision involves questioning the validity of the social science research used to demonstrate the inherent inequity of segregation. The report asserts, "The *Brown* decision is admittedly based on psychology and sociology, the two least precise of all disciplines."<sup>346</sup> This reassertion of established "facts" and the emphasis on the legitimacy of legal precedent illuminates the power battle over who gets to define truth. The committee continues to invalidate the evidence used in the *Brown* decision noting it to be of "inexact and controversial scientific authority" and again, contrary to established legal precedent. The deliberate reassertion of white

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<sup>344</sup> Ibid. 6.

<sup>345</sup> Ibid. 6.

<sup>346</sup> Ibid. 7.

supremacy in the face of this challenge rests on the validity of the historical structures—structures that purposefully disenfranchised non-white citizens.<sup>347</sup> Additionally there are claims that the court’s evidence involves “palpable examples in the decision of inattention to recorded, historical facts.”<sup>348</sup> The committee, following these attempts to delegitimize the very disciplines and methodologies that illuminate state legitimated white supremacy, next attempts to discredit those individual actors making these arguments.

Senator Eastland has exposed the “modern authorities” upon which the entire decision is based. Of the six “authorities” cited, K. B. Clark was an employee of the same NAACP whose lawyers were arguing the case. Theodore Brameld has ten citations for Communistic activities by the House Committee on Un-American Activities, and E. Franklin Frazier has eighteen. The chief reliance of the Court was Gunnar Myrdal’s *An American Dilemma*, which states that the U.S. Constitution is “impractical and unsuited to modern conditions,” and its adoption was “nearly a plot against the common people.”<sup>349</sup>

This passage demonstrates the logic that segregation not only threatens the concepts of the public because the public must be white, but because those who attempt to challenge deeply ingrained notions of belonging must be an even more overt threat to the nation at large.

The Texas Advisory Committee deliberately reasserts white supremacy in the face of a crisis to its legitimacy. “While showing great concern for the effect of segregation of the psyches of negro children, the Court neglected to display any concern whatsoever for the effect of integration on Southern white children and their parents.”<sup>350</sup> The committee

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<sup>347</sup> Ibid.

<sup>348</sup> Ibid. 8.

<sup>349</sup> Ibid. 8.

<sup>350</sup> Ibid. 7.

invokes the threat of integration throughout. “The dual school system shall be maintained, or the entire public school system will be in jeopardy.”<sup>351</sup> In prescribing recommendations for the state, the committee acknowledges the substantive differences between districts in the state.

Having examined the present situation in Texas in regard to the location of negro scholastics, the plight of negro teachers, and the amount of integration in the State, we turn our attention to the dominant fact of the entire issue—the will of the people of Texas which it is the function of representative government to execute.

Asking, “What is the will of the people of Texas,” the report cites the results of the July 28, 1956, Democratic Primary as evidence. “By a ratio of three and one-half to one, seventy-eight percent of the voters expressed themselves as being in favor of maintaining segregation in the public schools.”<sup>352</sup> The report presents a visualization of this data in its appendix. One conclusion from the committee’s data analysis invokes existing racial relations as a result of segregation as a justification for continuing segregation:

As might be expected, the percentage in favor of maintaining our racial mores is generally highest in those areas in which the percentage of the negro population is the highest. This is only natural, for the people in these areas best understand the advantages which segregation offers to both races because segregation is a fact and not just a legal theory.<sup>353</sup>

The committee’s dispute of social science facts does not prevent them from establishing their own subjective criteria for identifying facts. The report also purports to speak for non-white citizens, citing tenuous evidence of their actions as sufficient to derive conclusions about their desires and motivations. The report reads:

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<sup>351</sup> Ibid. 9.

<sup>352</sup> Ibid. 13.

<sup>353</sup> Ibid. 13.



There are indications that a substantial majority of negroes do not wish to attend integrated schools. For example, in Fort Stockton the school board conducted a poll which showed that the majority of negroes in the district favored segregated schools, and in Victoria 378 negroes were eligible for transfer to an integrated school but only 52 applied for transfer. There are other examples, but these serve to illustrate our conclusions.<sup>354</sup>

Alternate explanations for families not seeking integration, including the overt racism they might face, receive no attention.

Situating Texas along with other Southern states fighting against integration, the report cites that these states “are protesting in various ways against invasion by the federal government of their historic and traditional right to operate and control their own schools.” The piece goes on to clarify the relation between opposition to segregation and interposition. “The third proposition on the referendum called for an expression by the people of Texas on the use of interposition to halt illegal federal encroachment in those areas reserved by the Constitution to the States and their people.” The report notes “Eighty-one percent (81%) of the voters of Texas favored the use of interposition to halt destructive and unconstitutional federal action.”<sup>355</sup> The report further explains the term, defining its meaning in Texas to stand for “the lawful and constitutional protest by the State and its people against the invasion of its reserved rights under the Constitution,” and emphasizing that those rights include governance and operation of the state’s public schools.<sup>356</sup> This explanation continues positioning those who oppose segregation on the side of freedom, emphasizing their legal right to express opposition. This inclination to fight the decision is strongly expressed throughout.

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<sup>354</sup> Ibid. 15.

<sup>355</sup> Ibid. 16.

<sup>356</sup> Ibid. 16.

Those who favor mixing the white and colored races are loudly proclaiming that the Supreme Court has spoken in the segregation cases and that we should all accept those decisions without objection, protest or attempting to undo the manifest harm to the local communities directly affected thereby. The inevitable question arises, however, as to why the people, both white and colored, must accept the most recent judicial expression thereon when the fact is that we would not now be faced with this explosive situation had the NAACP and its supporting politicians been as willing to accept the 157 or more previous judicial opinions and decisions which were directly contrary to that to which our submission is now demanded.<sup>357</sup>

The report unequivocally argues for the “will of the people” to use interposition to halt “the illegal federal encroachment.” Consistent with that conclusion, the report offers up several strategies for the voting citizens of Texas.

The Advisory Committee includes recommendations for enacting interposition. The first recommendation urges citizens’ “individual, personal rejection of compliance.” The second, directed to those in official capacities, encourages action or non-action as needed to maintain a dual school system. The third directs the state legislature to adopt a resolution calling for a Constitutional amendment halting “illegal federal encroachment.” The report also contains legislative recommendations, all of which aim to further strengthen segregated schools while circumventing the Supreme Court’s decree and meeting the bar of “a racially nondiscriminatory school system.” These recommendations include having local boards formally designate schools as “negro” or “white,” and assign students based on race, but then eliminate race as a bar to transfer. The recommendations also outline ways to attempt to deny state funds to integrated schools.<sup>358</sup> If that does not work, yet another idea (the sixth) recommends, “That any child may be exempted from compulsory attendance at integrated schools provided however that compulsory

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<sup>357</sup> Ibid. 17-18.

<sup>358</sup> Ibid. 28-29.

educational requirements are otherwise complied with.”<sup>359</sup> This point highlights the extent of the willingness of white citizens to avoid integration.

Finally, considering the complete abolition of compulsory education, the report explains their perceived dichotomy for parents, integrated education or no education. This is a fundamental declaration of the unassimilability of non-whiteness. The report indicates that such choice is unacceptable and urges the Legislature to consider a tuition plan for parents who do not want their children in integrated schools to still receive state funds to attend “a segregated, non-sectarian private school.” The details of such a plan lack further elaboration, though the authors write, “needless to say, the child could not then be enrolled in an integrated private school. Misuse of the tuition grant should be made a felony.”<sup>360</sup> Here privatization emerges as a desirable alternative to a public system no longer in sync with the ideals of citizens invested in white supremacy.

The recommendations go on and on, presenting varied approaches to maintaining white supremacy in the face of its challenge. The twelfth recommendation offers other criteria that are considered to be non-racial. Following up a recommendation to make transfer a cumbersome, bureaucratic process, the report outlines the following:

That, in considering a petition for transfer, the local school board should take into consideration such factors as health, morals, family background, intellectual aptitude, course of study, location of residence, previous training, and welfare of the particular child, his effect on the academic standards of the school to which he seeks to transfer, the welfare of other children in that school, his compatibility with the children in that school, and any and all other reasonable factors which the local board sees fit to take into consideration. Race of color is not a reasonable factor.<sup>361</sup>

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<sup>359</sup> Ibid. 29.

<sup>360</sup> Ibid. 29.

<sup>361</sup> Ibid. 30-31.

These other criteria have clear and substantive links to race and racialization. Further highlighting the explicit racial intent of these recommendations, the report offers that no such procedure or policies, or permission of any sort, be required as long as a student wishes to transfer to a school designated for their own race. Ultimately, the authors offer twenty recommendations and stress that their maximum effectiveness comes from their combined impact. Further setting the stage for the necessity of future litigation, the authors write “we are convinced that no Federal court in Texas will interfere in the operation of any school district until the district is involved in a law suit. Not until then will the particular school board be subject to a Federal court order.”<sup>362</sup> The report concludes with what reads like a thinly veiled threat: “Your subcommittee wishes to point out that, in view of the above, every local school board should stop, look and listen before taking any steps regarding integration.”<sup>363</sup> The imperative to “stop, look and listen,” implies danger lurking around the corner and the report notes “school districts face a distinct possibility of jeopardizing the funds they are eligible to receive . . . if integration is prematurely effected.”<sup>364</sup> The report and its efforts failed to fully halt efforts towards integration, but they provide fodder and a clear rationale for those who opposed the Supreme Court’s decisions.

This report provides a blueprint for continuing to keep segregated schools and talking about race without explicitly mentioning it. Furthermore, the report sets forth a formula for response to the crisis of *Brown*, as the authors clearly delineate the limits of the ruling: “the Supreme Court decision does not specifically require integration, but

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<sup>362</sup> Ibid. 38.

<sup>363</sup> Ibid. 38.

<sup>364</sup> Ibid.

rather prohibits segregation.” As a whole, the report demonstrates the extent to which those in power sought to reassert the legitimacy in the face of a crisis to segregation, a foundational principal in state public education. The rhetoric in this document particularly elucidates how white supremacist thinking logically and deliberately sought a path forward.

The report also did not prevent the Texas Legislature’s continued moves to preserve segregation as the state legislature began drafting segregation bills following *Brown*. Among these, House Bill 65 required local elections to determine if schools should desegregate. The bill further threatened “a school without a vote of its people faces a loss of state funds, loss of accreditation and even the imposition of fines upon its officials.”<sup>365</sup> H.B. 65 passed in mid May of 1957, despite a ten-hour filibuster led by Henry Barbosa Gonzalez and Abraham “Chick” Kazen, Jr.<sup>366</sup> Brian Behnken also tells the story of another segregationist bill, H.B. 1, which Chick Kazen and Henry Gonzalez again attempted to filibuster in late 1957. H.B. 1 planned to allow the governor to close schools where integration required the presence of federal troops. The state had called this euphemistically the “anti-troop bill” because it would prevent another Little Rock or Mansfield crisis. But the bill, like so many others, had a much more basic purpose—to stop integration. The bill passed. Here, the state’s reassertion of white supremacy morphed as previous court rulings rendered older strategies unacceptable. Behnken concludes: “Despite the fact that most of the prosegregation bills passed, Texas never

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<sup>365</sup> “Segregation Kept For Dallas Schools”; For a more detailed discussion of both media coverage and the back and forth regarding these reversals, see McCorkle, *Desegregation and Busing in the Dallas Independent School District*.

<sup>366</sup> Behnken, *Fighting Their Own Battles*.

vigorously enforced these laws.”<sup>367</sup> While the state supreme court would later pronounce some of them unconstitutional, others remained dormant until they expired.<sup>368</sup>

Yet even with this decree emerging from the state level, the practical experience of segregation/desegregation around the state varied. Importantly, the variation demonstrates both a diffuse commitment to protecting the privileges associated with whiteness and a widespread array of tactics for maintaining such privileges. Civil rights activists called out the diffuse yet calculated and deliberate patterns that Martin Luther King, Jr. described as “massive resistance.”

All of these calculated patterns—the defiance of southern legislative bodies, the activities of white supremacy organizations, and the distortions and rationalization of the segregationists—have mounted up to massive resistance. This resistance grows out of the desperate attempt of the white South to perpetuate a system of human values that came into being under a feudalistic plantation system and which cannot survive in a day of growing urbanization. These are the rock-bottom elements of the present crisis.<sup>369</sup>

Writing in 1958, Martin Luther King, Jr. specifically addressed the southern response to *Brown v. Board of Education* and placed schools at the center of the present storm. His quote illustrates the theme for years to come as many prominent white Texans fought to prevent integration. While the governor’s report represents the thinking of citizens with power and privilege responding to Brown, the imperatives in that report played out differently in school districts across the state.

The next few paragraphs briefly examine some of the disparate responses in major districts across the state, before more thoroughly examining a legal challenge and proposed remedy in Dallas in the next section. The brief snapshots of districts presented

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<sup>367</sup> Ibid.

<sup>368</sup> Ibid.

<sup>369</sup> King and Washington, *A Testament of Hope*. 471.

here demonstrate how much more research and inquiry remains to fully tell these stories in a nuanced way.<sup>370</sup> San Antonio, the location of the largest chapter of LULAC, became the first urban district in Texas to adopt a desegregation plan following *Brown*. San Antonio initially held a special convention in November of 1930 to discuss a strategy for bringing about school desegregation. Prior to the *Brown* ruling, in 1953, the San Antonio Teachers Council voluntarily voted to merge with the black teachers group.<sup>371</sup> San Antonio School District (SASD), the first urban district in Texas to adopt a desegregation plan, did so with relatively little resistance in the 1954-1955 school year.<sup>372</sup> However, a lack of resistance did not translate to full integration or a completely positive experience for students. *The San Antonio Current* interviewed several activists from San Antonio's civil rights movement who reiterated how racial separation remained an unspoken truth despite a lack of laws on the books.<sup>373</sup>

Furthermore, a 2004 *San Antonio Express-News* article by Karen Adler, titled "Integration was students' lonely task; Minorities often encountered isolation, hostility in their quest for better schooling," quotes Carolyn James, who was nine years old in 1955, the year San Antonio School District first integrated.<sup>374</sup> Adler recounts James experience:

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<sup>370</sup> The Texas Education Agency sought federal funds to support desegregation for the 1972-72 school year. In "TEA Seeks Federal Desegregation Funds," *The Austin Statesman* (1921-1973), March 12, 1972.

<sup>371</sup> Karen Adler, "Integration Was Students' Lonely Task Minorities Often Encountered Isolation, Hostility in Their Quest for Better Schooling.," *San Antonio Express-News*, April 26, 2004, sec. A.

<sup>372</sup> Special to The New York Times, "SAN ANTONIO SETS INTEGRATION PACE: Most Public Facilities Open in 3d Step of Program 'City of Tolerance,'" *New York Times*, July 14, 1963.

<sup>373</sup> Nathan Alderman, "In Segregated San Antonio, a Multiracial Coalition Stood up for Equality - by Sitting down for Lunch; Integration, With Enchiladas," *Current*, April 14, 2004.

<sup>374</sup> Adler, "Integration Was Students' Lonely Task Minorities Often Encountered Isolation, Hostility in Their Quest for Better Schooling."

For many students like James, integration was a tradeoff. Those who could left black schools that had secondhand books and limited course offerings but dedicated, caring teachers. They enrolled in schools with college preparatory curricula and up-to-date lab equipment, but often felt alienated or ignored in classrooms that were predominantly Anglo. At Jefferson High School, James was one of six black students out of 600 students to graduate in 1963. She took Latin and French but wasn't allowed to join the cheerleading squad. She was on the softball team, but when she hit a home run, a white teammate called her a racial slur and accused her of trying to show off. When James was told she couldn't go to a yearbook conference in Dallas because dorm rooms weren't available for black students, the rest of the staff went without her. But she went on to college and graduate school.

James' experience highlights her personal trade offs, as she experienced some personal and social limitations while simultaneously having access to an education that allowed her some measure of academic success. Indeed, integration in San Antonio proceeded relatively peacefully in comparison to many other districts around the state and country, resulting in the desegregation of all grades by 1960 and an integrated teaching staff by 1962. Still, the Federal Health, Education, and Welfare Department (HEW) found San Antonio to be in violation of the Civil Rights Act of 1964 because several schools maintained a predominantly minority enrollment. To satisfy the federal government, the district started busing black students in 1969. Wheatley High School, a source of pride in the black community, was shut down to force its students to attend other schools. "It was really a blow to the community when we lost Wheatley," Minor said.<sup>375</sup> Going to a predominantly Anglo school was a culture shock for Charles English, who grew up in Jefferson Heights and was bused to Highlands High School in the mid-1970s.

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<sup>375</sup> Alford, "A Dream Deferred; The News in 1954 That Black and White Students Would Soon Attend the Same Schools Pulled the Plug on American Segregation. But Brown's Legacy in Austin Has Largely Been One of Missed Opportunities."



A brief examination of the Austin Independent School District (AISD) provides a comparison. At the time of the *Brown* decision Austin's schools reflected absolute segregation. A 2004 retrospective regarding the impact of *Brown* on Austin notes:

The *Brown* ruling initially did not affect Hispanic students, who won a separate battle against segregation in 1954 by arguing that segregation laws did not apply to them because they weren't colored, but "other, non-white." Asian students, considered "colored" under segregation, benefited from *Brown* nationally, but didn't make up a sizeable portion of Austin's population until the 1990s. In 1955, Austin gradually began allowing black high school students to attend neighborhood schools with whites.<sup>376</sup>

AISD, led by superintendent Irby Carruth and the Board of Trustees, took some steps to voluntarily desegregate, implementing "freedom of choice" plans allowing a few black students to attend white schools, wholly dependent on voluntary action and goodwill.<sup>377</sup> Austin's pronounced segregation, with the majority of black residents on the East Side as a direct result of the 1928 city plan combined with discriminatory housing patterns, meant that the mere removal of formal segregation from the neighborhood school system had little impact on integration.<sup>378</sup> In the year following *Brown*, thirteen black students enrolled at three Austin high schools—Austin, Travis, and McCallum. At the end of the decade there were still only forty black students enrolled in white schools. Put another way, Larry Cuban notes that in 1964, a decade after *Brown*, "98 percent of black children in Austin still attended segregated schools."<sup>379</sup> In 1968, 40 percent of Mexican-American

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<sup>376</sup> Ibid.

<sup>377</sup> Larry Cuban, *As Good as It Gets: What School Reform Brought to Austin* (Cambridge, Mass: Harvard University Press, 2010). 35.

<sup>378</sup> Koch & Fowler and Austin (Tex.), *The Sunday Morning News City Plan Supplement: Being the Report and Recommendations of Koch and Fowler, City Plan Engineers, for the City of Austin, February 12, 1928* (Austin, Tex: Sunday Morning News, 1928).

<sup>379</sup> Cuban, *As Good as It Gets*.

students attended school where 80 percent of students shared their ethnicity.<sup>380</sup> In 1968 Wilhelmina Delco became the first African-American AISD Trustee. Looking back at her time on the board, Delco noted that her colleagues explicitly stated, “They would do what the courts ordered and not one thing more.”<sup>381</sup>

As in other Texas school districts, *Brown v. Board of Education*’s impact remained limited in the Dallas Independent School District (DISD). Dallas school officials’ overt resistance to integration prompted a protracted legal battle over desegregation.<sup>382</sup> Starting in 1954, the NAACP asked for immediate integration at the beginning of each school year; “DISD Superintendent W.T. White would reply that it couldn’t be done. As he said in the 1956 exchange, rushing into integration that year would be a ‘radical and revolutionary reversal of the social customs for this part of the country and would be disastrous.’”<sup>383</sup> The legal and political systems further aided the refusal to integrate. In a 1955 ruling again a plaintiff aiming to desegregate Dallas’ public schools, United States District Court Judge William H. Atwell asserted that the Supreme

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<sup>380</sup> Ibid.

<sup>381</sup> Quoted in Ibid.; Alford, “A Dream Deferred; The News in 1954 That Black and White Students Would Soon Attend the Same Schools Pulled the Plug on American Segregation. But Brown’s Legacy in Austin Has Largely Been One of Missed Opportunities.”

<sup>382</sup> Given the extent of the litigation impacting DISD, the topic has received relatively more scholarly attention than other districts in Texas. Glenn M. Linden’s book *Desegregating Schools in Dallas, Four Decades in the Federal Courts* and Gerald McCorkle’s thesis “Desegregation and Busing in the Dallas Independent School District” both examine the topic in detail. Linden’s work presents a detailed look at the litigation in relation to composition of the school board over forty years and emphasizes the business community’s interaction with the school district, whereas McCorkle’s study focuses on the impact of busing in Dallas. Linden’s larger more focused study draws primarily on newspaper accounts and court transcripts to illustrate differences in opinions between the Circuit Court and the United States District Court of Dallas, highlighting the district court’s decisions ranging from non-compliance to gradualism.

<sup>383</sup> Scott Parks, “Integration Plan Went down Tubes - DISD, Judge Saw TV Time as Busing Option, but Suit Parties Didn’t,” *Dallas Morning News, The (TX)*, November 17, 2002, SECOND edition.

Court overstepped its authority in *Brown*. He issued a similar ruling two years later.<sup>384</sup> While the Fifth Circuit Court overruled both of Judge Atwell's refusals to immediately desegregate Dallas schools, the necessity of additional legal steps continued to delay desegregation in Dallas and pushed the appeal into the fall of 1959.<sup>385</sup>

The continued lack of action led the NAACP to file another motion requiring further appeal, despite the fact that Dallas appeared to have lost the battle for segregation in 1961.<sup>386</sup> *The Austin Statesman* published an article on June 28 of that year stating, "The Dallas Independent School District has lost its fight for segregation, as U.S. District Judge T. Whitefield Davidson ordered the city to go ahead with a stair-step integration plan."<sup>387</sup> Judge Davidson's ruling condemned the federal government for "forcing" desegregation on the community. He wrote, "The people of Dallas by four-to-one majority vote now stand for segregation. They have integration now not by consent, not by choice, but by force."<sup>388</sup> Certainly incremental, the plan Davidson's ruling put into effect integrated one grade per year, a twelve-year process.<sup>389</sup>

Despite the incremental nature of the plan, the official start of integration prompted fear and apprehension, both on the part white parents and business leaders concerned about economic ramifications of potential violence. The ruling and

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<sup>384</sup> <http://library.law.smu.edu/DISD/Background-Info>

<sup>385</sup> "Delay Due In Dallas Integration," *The Austin Statesman* (1921-1973), August 13, 1959, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/1528012820/abstract?accountid=7118>; "Segregation Kept For Dallas Schools."

<sup>386</sup> McCorkle, *Desegregation and Busing in the Dallas Independent School District*.

<sup>387</sup> "Integration Is Ordered For Dallas," *The Austin Statesman* (1921-1973), June 28, 1961, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/1527773555/abstract?accountid=7118>.

<sup>388</sup> Ibid.

<sup>389</sup> Ibid.

corresponding fear prompted Dallas businessmen to create a video in 1961, “Dallas at the Crossroads,” a locally produced, approximately twenty-minute documentary, narrated by Walter Cronkite.<sup>390</sup> The documentary, whose creators include Dallas businessman Stanley Marcus, of Neiman-Marcus Department Stores, opens in a church with an appeal to Jesus and an emphasis on narratives of individual and collective progress. Immediately juxtaposing this peaceful progress in Dallas are clips of violence as a result of school desegregation in Little Rock and New Orleans. Cronkite narrates regarding the other cities’ conflict, “the face of violence is the face of hate . . . civic irresponsibility.” The images stay on the white citizens as Cronkite continues: “The face of man-made destruction . . . it’s counterpart is the face of fear.” The documentary further appeals to both sentiment and the future by shifting to concern about the white children involved. “This face can be a child, your child’s face. That children are the most deeply affected persons in times of disharmony and strife is borne out by the Dallas County Medical society.” A local doctor takes up the narration, reiterating, “Violence does frighten children. They become uncertain and insecure . . . the pain, anger, hysteria, and fear is disturbing to them.” The documentary further emphasizes that children look to their parents. “If these parents represent violence or condone violence, then the children become very upset and disturbed. Disturbed children are sick children.” Here the doctor anticipates medical implications for children faced with violence, but only shows or emphasizes white children. The violence here excludes the impact of explicit violence or the violence of segregation itself on black students.

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<sup>390</sup> “Dallas at the Crossroads,” *Texas Archive of the Moving Image*, accessed January 13, 2015, [http://www.texasarchive.org/library/index.php?title=Dallas\\_at\\_the\\_Crossroads](http://www.texasarchive.org/library/index.php?title=Dallas_at_the_Crossroads); Dallas Citizens Council, *Dallas at the Crossroads* ([Dallas, 1961]).

The narration then shifts to explicate white citizens' role in ensuring non-violence. "The law is a system where the unfortunate stand as peer and equal with the most privileged." Several lawyers and a judge emphasize the law has been decided and desegregation must begin in the schools.

Violence cannot change a decision rendered within these walls. Once a decision has been made it is the law. On April 6 of this year the federal court decision became final that some degree of desegregation must by law begin in Dallas schools this fall. In spite of arguments, in spite of criticisms, in spite of personalities, the law is the law. Disagreement or dissatisfaction with any law should not and must not be expressed by citizens in violence. In a democracy there are always legal channels open to those who would prefer to change the law. These are the methods which a good citizen uses, not bricks, bats, and stones.<sup>391</sup>

The message is clear—despite opposition to desegregation, white citizens should only protest through legal channels. The voice shifts the overtone "Stand up and be counted for law and order." The refrain to respect "law and order" appears throughout the video, aimed particularly at the white citizens viewing this documentary. White citizenship retains its salience throughout with imperatives to the imagined white viewer such as "You must be a good citizen" and value statements assuming collective identity like "We highly value active, good citizenship." The imagery in the documentary emphasizes that citizens are white. The documentary concludes with a classroom of white children reciting the pledge of allegiance in front of an American flag while "America the Beautiful" plays in the background. A voice-over informs citizens of the inevitability of desegregation and urges citizens to respect the law, the American government, and—most importantly—moral decency. Not a single black citizen appears in the entire film. Stair step policies began that fall and token integration continued in Dallas for years to come. The Civil Rights Act of 1964 prompted further change in Dallas, requiring school

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<sup>391</sup> "Dallas at the Crossroads."

desegregation as a prerequisite for federal funding eligibility. When higher courts finally threw out Judge Davidson's plan in 1965, Davidson chose to retire, maintaining his opposition to school integration. In 1967 every school in DISD was open to students living within its geographic boundaries, a policy that prompted Superintendent White to declare the end of desegregation despite the fact the degree of integration remained tiny.<sup>392</sup>

## **BROWN AND BUSING**

Both Mexican American and African American activists continued pursuing new strategies in their ongoing, protracted fight for integrated schools. Chicano activists dismissed "the whiteness strategy in favor of a brownness strategy."<sup>393</sup> Mexican American leadership commitment to founding a group dedicated to Chicanos led to the creation of MALDEF, which began operating in 1968 after the acquisition of a Ford Foundation grant providing five years of funding. Brian Behnken writes, "MALDEF's greatest achievement was to acquire legal recognition of Mexican Americans as a brown people." This racial repositioning of Mexican Americans meant Chicanos could access equal protection granted by the Fourteenth Amendment. One of the first places of this strategy of brownness came in action was in Corpus Christi in 1968.

The legal debate over brownness came to a head in Corpus Christi in 1968. As in other locales, the city's school district implemented a desegregation plan that integrated blacks and Chicanos, a process soon to be known as "pairing" or "lumping" . . . But in most pairing or lumping plans, districts combined predominately African American and Mexican American schools. Because the state classified Chicanos as white, the pairing plans legally desegregated schools.

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<sup>392</sup> McCorkle, *Desegregation and Busing in the Dallas Independent School District*.

<sup>393</sup> Behnken, *Fighting Their Own Battles*. 196.

Of course, these plans left Anglo children unaffected by integration, the district's desired result.<sup>394</sup>

Local Chicano and African American parents, assisted by MALDEF lawyers, brought forward the case arguing discrimination against non-white students in *Cisneros v. Corpus Christi Independent School District*. Attorneys working on the case argued that the district should integrate black, white, and brown pupils. Behnken details what this required of the court in terms of racial definition.

But in order to prove this, the court had to acknowledge that Chicanos constituted an identifiable ethnic minority. Judge Woodrow Seals found that on the basis of language, culture, religion, and physical characteristics, Mexican Americans formed a distinct minority. He also determined that the district had segregated blacks and Chicanos, contrary to *Brown*.<sup>395</sup>

However, despite the plaintiffs' victory, the ruling did not impact districts beyond Corpus Christi. Other student protests occurred with groups like Mayo in South Texas in the late 1960. Edcouch-Elsa School District students boycotted class in 1968 after being punished for speaking Spanish. Kingsville students mirrored the walkouts in 1969. Demonstrations also occurred in Crystal City where nearly 1,000 Chicano students boycotted classes and did not return in following weeks, instead holding classes at "liberation schools" emphasizing Mexican American history and culture. After four weeks, the district agreed to nineteen demands, including easing the punishment for Spanish language use and dress code infractions.

Following the Civil Rights Act of 1964, U.S. Department of Health, Education, and Welfare (HEW) officials identified other schools districts that failed to desegregate. A HEW team found Austin out of compliance in 1968 and unsuccessfully attempted to negotiate with AISD officials. As a result, HEW prompted the U.S. Department of Justice

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<sup>394</sup> Ibid. 197.

<sup>395</sup> Ibid. 197.

to file suit against AISD for its failure to integrate schools, leading to a 1970 suit in federal district court.<sup>396</sup> At the time of the suit, East Austin schools served nearly 80 percent of Austin's black students and nearly 60 percent of its Mexican-American students, for a student population of more than 90 percent non-white students. Thus, Austin's legal battle over racially segregated schools began in 1970 when Volma Overton, Austin branch president of the NAACP, sued AISD on behalf of his daughter in 1970, and the U.S. Justice Department and the Mexican American Legal Defense and Educational Fund joined his suit.<sup>397</sup> The judge's initial remedy involved transfers and new school boundaries but failed to initiate change.<sup>398</sup> As a result of the suit a federal judge ordered new attendance boundaries and closures of two historically black high schools, requiring those black students to be bused to all-white schools.<sup>399</sup> Citing tensions during these initial years, Brad Buchholz recalled that African-American students still mourned the closure of "old L.C. Anderson High School, the pride of East Austin, in 1971," as they attended the now 95 percent white school.<sup>400</sup> Austin proved particularly

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<sup>396</sup> Alford, "A Dream Deferred; The News in 1954 That Black and White Students Would Soon Attend the Same Schools Pulled the Plug on American Segregation. But Brown's Legacy in Austin Has Largely Been One of Missed Opportunities."; Cuban, *As Good as It Gets*.

<sup>397</sup> Debbie Prager, "Texas Educator Leads Montgomery List," *The Washington Post* (1974-Current File), January 19, 1980, sec. METRO Weather Obituaries Comics, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/147182660/abstract?accountid=7118>.

<sup>398</sup> Cuban, *As Good as It Gets*.

<sup>399</sup> Alford, "A Dream Deferred; The News in 1954 That Black and White Students Would Soon Attend the Same Schools Pulled the Plug on American Segregation. But Brown's Legacy in Austin Has Largely Been One of Missed Opportunities." In a 1971 attempt, the Board of Trustees closed the only black secondary schools in Austin, Anderson and Kealing. Anderson reopened in 1973 in affluent, white, West Austin, with East Austin native Charles Akins as principal.

<sup>400</sup> Today other scholars continue to document the loss of African American Schools post Brown and the corresponding ramifications for the education of black students. In another example, Vanessa Siddle Walker's article "African American Teaching in the South 1940-1960" demonstrates that African American teachers in the south worked in unfair and discriminatory positions, but viewed themselves as trained professionals. Walker argues these educators "worked in concert with their leaders to implement a



hostile to busing. The opposition came both at the student and adult level. The first students to desegregate in the 1970s faced open hostility. “Race riots exploded in the schools. White students armed with nail-studded baseball bats greeted the first blacks to integrate McCallum and Reagan high schools.”<sup>401</sup> Gus Garcia, a city councilor on the board in 1971, said, “it was an absolute mess.”<sup>402</sup> An organized private group, the Austin Anti-Busing League, coordinated an attempt to exert pressure over both public opinion and school board policy prior to an appeal to the Fifth Circuit.<sup>403</sup> The hostility to busing in Austin garnered further national headlines.<sup>404</sup> The legal battles over busing in Austin spanned a decade.<sup>405</sup> Writing about outgoing Superintendent Jack Davidson in 1980,

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collective vision of how to educate African American children in a Jim Crow society.” Synthesizing oral histories, Walker synthesizes five principles encompassing how African American teachers felt about their roles including: a relationship with the community, a commitment to professional ideals, a genuine care for students, an imperative to related the curriculum to students’ needs and finally an expectation that teachers would receive support from the community. Importantly, Walker demonstrates that on the even of the Brown decision in 1954, Texas was one of six states where black teacher training exceeded white teacher training.

<sup>401</sup> Samuel Autman, “Parents Worry About ‘Resegregation’ of Elementary Schools; Austin, Texas, Still Struggles With Integration After Years of Acrimonious; Busing Program,” *St. Louis Post-Dispatch* (Missouri), June 8, 1997, <http://www.lexisnexis.com.ezproxy.lib.utexas.edu/lnacui2api/api/version1/getDocCui?lni=3SKN-PMV0-005J-C2WD&csi=11810&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true>.

<sup>402</sup> Ibid.

<sup>403</sup> Charles Edwin Davis, “United States V. Texas Education Agency, Et Al.: The Politics of Busing” (Ph.D., The University of Texas at Austin, 1975), <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/288011508/citation?accountid=7118>.

<sup>404</sup> Peter Milius, “Turnabout on Busing: The Austin Desegregation Case: ‘Minimum Required by Law,’” *The Washington Post, Times Herald* (1959-1973), August 8, 1971, sec. OUTLOOK Editorials/Columnists, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/148053031/abstract?accountid=7118>.

<sup>405</sup> “New School Plan Ordered in Texas: U.S. Appeals Court Reverses Total Rejection of Busing,” *New York Times* (1923-Current File), August 3, 1972. This article also describes how the court noted the claim of discrimination against Mexican-Americans in the Corpus Christi case, again raising questions of the legality of Mexican-American segregation; while the court found such segregation in violation of the Constitution, the recommended remedy involved a new school assignment plan. Brian Behnken also discusses this case in *Fighting Their Own Battles*, noting that the school district there placed Mexican-descent students in separate class for three years, resulting in many parents withdrawing their students from

Debbie Prager of *The Washington Post* notes that it took ten years of court fights and appeals before the final order for Austin to begin busing to racially balance its schools.<sup>406</sup>

The Houston public schools faced a similar desegregation suit to those in already discussed around the state.<sup>407</sup> In 1956, a court ordered Houston Independent School District (HISD) to “prepare for integration.” Integration began in Houston when nine-year-old Tyrone Raymond Day started at Kashmere Gardens Elementary School in 1960. However, Day’s schooling did not precipitate widespread integration. In 1965, Reverend William Lawson joined with the NAACP to form People for Upgraded Schools in Houston (PUSH) in an effort to speed desegregation. PUSH organized a picket of an HISD school meeting and, in May of 1965, led ninety percent of Houston’s black school children in boycotting classes to protest the slow pace of integration.<sup>408</sup> Later in the same year, PUSH sponsored a tour of Houston’s black high schools to demonstrate the problems they faced. PUSH planned another march in June of the same year. Despite these efforts, black citizens in Houston continued to fight for integration. HISD introduced “freedom of choice” in 1966, which unsurprisingly failed to desegregate schools. Mexican Americans also protested discriminatory practices in HISD. In 1968-69 a group of Mexican American high school students formed Advocating Rights for Mexican-American Students (ARMAS) to protest their punishment for speaking Spanish and

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school, which matched the official intent. A brief discussion of both of these moments appears later in this chapter.

<sup>406</sup> Prager, “Texas Educator Leads Montgomery List.”

<sup>407</sup> For a fairly comprehensive history of the construction of Houston Public Schools prior to 1930, see Katherine Keller, “A History of Public Education in Houston, Texas” (1930).

<sup>408</sup> Kim Cobb, “After Desegregation / Public Schools Seek New Remedies Where Race-Based Orders Failed,” *Houston Chronicle*, June 2, 2002, 1.

violating dress code. ARMAS began walkouts in 1969, though HISD resisted and the boycotts ultimately had no effect on the administration.

In 1970 HISD implemented a new integration plan in an effort to comply with *Brown*. However, this plan integrated only African American and Mexican American schools and, much like Dallas, consisted only of busing between black and Chicano schools.

Since the HISD still classified Mexican Americans as white, by pairing Chicano schools and black schools the district achieved “integration.” Chicanos would serve as symbolic “whites” for desegregation purposes—“pawns, puppets, and scapegoats” as one activist put it—thereby ensuring that predominately Anglo schools remained white.<sup>409</sup>

Behnken writes, “the whiteness strategy had come back to haunt Mexican Americans,” greatly frustrating Chicanos who were promoting brownness.<sup>410</sup> Both African Americans and Mexican American constituents viewed the plan as discriminatory, but the school board vehemently defended it.<sup>411</sup> HISD Superintendent George Garver reiterated, “the face of the matter is, in this city and state, Mexican Americans are white.” The legal victory in Corpus Christi had no impact and as a result MALDEF leaders sued the district in 1970, contending both that the district perpetuated illegal segregation and that Chicanos constituted a distinct minority group separate from whites. The judge ruled against the plaintiffs in *Ross v. Eckels*, discouragingly adding that the integration of black and Chicano students constituted effective efforts at desegregation.

Mexican Americans first marched in opposition to the desegregation plan. Then several community groups formed, including the Mexican American Education Council

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<sup>409</sup> Behnken, *Fighting Their Own Battles*. 200.

<sup>410</sup> Ibid. 200.

<sup>411</sup> Ibid.

(MAEC), and initiated community education. On the first day of school in 1970, MAEC organized a boycott that included half of all Mexican-origin students in HISD, an estimated 3,500. Students instead attended separate strike schools, called Huegla schools, where students received instruction on Chicano history and bilingual education. Brian Behnken notes Chicano activists hoped black activists would support the boycott, and initially some, including the NAACP, did. Behnken describes what happened next:

Since Mexican Americans protested the HISD's decision to integrate blacks and Chicanos, some African Americans worried that Chicanos simply did not want to attend school with blacks. When a few Chicanos uttered racist opinions about black people, the African American community felt betrayed. Unification once again eluded these groups."<sup>412</sup>

The Huegla schools continued until after the "so-called HISD mini-riot," where a school board meeting devolved into a verbal altercation and then a physical fight. HISD agreed to revise the plan a few weeks after the meeting, but issued an unrevised plan in early 1981. MAEC repeated the protest, eventually securing a grant from the HEW. The protests continued for the duration of the year and again in the 1971-72 school year. However, according to San Miguel, the schools began to devolve due to infighting and uneven middle class support. However, incidents of overt racism in HISD reinforced the need and value of the Huegla schools. MALDEF appealed the earlier decision in *Ross v. Eckels* and in 1972 the Fifth Circuit Court of Appeals ruled in their favor noting that Chicanos needed to be considered an identifiable minority for the purposes of integration plans.

That Dallas schools remained segregated at the declared end of segregation undergirds the Tasby lawsuit though as discussed multiple challenges preceded the 1971

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<sup>412</sup> Ibid.

Tasby case.<sup>413</sup> African-American construction worker and cab driver, Sam Tasby, along with parents of twenty-one African American students, sued the school district so that his sons could attend a nearby school.<sup>414</sup> At the time Tasby filed the case, white students comprised 60 percent of the DISD student population.<sup>415</sup> The Tasby case in its entirety ran for 33 years, and today, DISD contains almost no white students.<sup>416</sup> While other scholars devote more attention to the details surrounding this case and the key people involved, this chapter focuses on the initial suit and the corresponding plans as the challenge to the status quo. The lawsuit sought a “comprehensive plan” for desegregation, asserting that predominantly white schools in DISD remained superior to predominantly African American and Mexican American schools in everything from facilities to educational services.<sup>417</sup> A write up in the *Dallas Morning News* describes the contents of the suit as follows: “the suit noted that after long and protracted litigation 10 to 15 years ago, Dallas still attaches to its black students a “badge of slavery” in spite of the prohibitions of the 13th Amendment to the U.S. Constitution.”<sup>418</sup>

In responding to the case presiding Judge Taylor consulted, among other groups, the Texas Education Technical Desegregation Assistance Center (TEDTAC), a group

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<sup>413</sup> For a much longer, more detailed history of race, gender, and class histories in Dallas see Michael Phillips, *White Metropolis: Race, Ethnicity, and Religion in Dallas, 1841-2001* (Austin: University of Texas Press, 2006).

<sup>414</sup> Jim Schutze, “Segregation Forever; How Dallas Got What It Wanted,” *Dallas Observer*, May 15, 2003.

<sup>415</sup> Ibid.

<sup>416</sup> Ibid.

<sup>417</sup> McCorkle, *Desegregation and Busing in the Dallas Independent School District*. In addition to a new plan, the plaintiffs sought the formation of a “Tri-Racial School Panel.”

<sup>418</sup> “Judge Asked to Formulate ‘Tri-Racial’ School Panel,” *Dallas Morning News*, October 7, 1970, sec. 6, NewsBank/Readex, Database: America’s Historical Newspapers, SQN: 0FD7227F70FA872B.

created and funded by the U.S. Department of Education following the 1964 Civil Rights Act, which had recently completed a strongly criticized, and ultimately rejected, study of the Houston public schools, partially described above.<sup>419</sup> In 1971, TEDTAC presented “Plan C” to Judge Taylor, a proposal that called for changing secondary school boundaries, pairing elementary schools, and eliminating five predominately black schools.<sup>420</sup> Plan C aimed to create the same racial ratio at each school: 60 percent white, 30 percent African American, and 10 percent Mexican American. Opposition emerged quickly from both the African American community and the school board.<sup>421</sup> Public sentiment remained negative.

On July 23, 1971, the Dallas Independent School District issued another plan in response to the Tasby case, the “Confluence of Cultures: Desegregation Plan.” Emerging from the district court ruling in the case of *Eddie Mitchell Tasby, et al. vs. Dr. Nolan Estes, General Superintendent, Dallas Independent School District, et al.* the desegregation plan directly responds to Judge Taylor’s July 16 ruling which rejected three earlier plans and gave the school board one week to submit a new plan. Focusing on Dallas’ dismal attempt at desegregation, the ruling ignored issues of equity. Taylor further suggested both his opposition to massive busing and the promise of television used of as a desegregation tool.<sup>422</sup> Taylor genuinely believed that black and white

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<sup>419</sup> McCorkle, *Desegregation and Busing in the Dallas Independent School District*.

<sup>420</sup> “Integration Ruling Delayed,” *The Austin Statesman (1921-1973)*, July 24, 1971, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/1514528539/abstract?accountid=7118>.

<sup>421</sup> McCorkle, *Desegregation and Busing in the Dallas Independent School District*. Again McCorkle goes into this in more depth, pulling newspaper quotes regarding each contingents response to the TEDTAC plan.

<sup>422</sup> Ibid.

children interacting through closed circuit television represented a promising attempt at a solution.

The school board met the deadline, submitting the “Confluence of Cultures Plan.” The phrase “Confluence of Cultures” appears not only in the title, but also as referent throughout the document.

As was asserted throughout the trial, the Dallas Independent School District wishes to cooperate with the Court. To this end, the Board of Education and the Administration have given careful consideration to the Memorandum Opinion and the Court’s comment thereon in fashioning the remedy included in the courts direction. In particular, the thinking of the Court appointed tri-racial committee and others was utilized as this desegregation plan was developed.<sup>423</sup>

The plan specifically cites three guidelines utilized by the district. These include that no pupil could be excluded from any school because of race, that each individual school did not need to reflect the racial makeup of the system as a whole, and that Mexican Americans could not count as Anglos for determining racial balance, a nod to the practice’s prevalence. In citing other key investments in the plan’s direction and implementation, the preface notes “The Board of Education feels very strongly about two elements used in the developing of the plan—that it should be free of massive busing, and that it include a substantial compensatory educational program for economically deprived students.”<sup>424</sup> These investments echo Judge Taylor’s desires.<sup>425</sup> Noting a desire for the plan to be “administratively feasible,” the plan submitted for consideration includes measures for faculty and staff, information about the tri-racial advisory committee, and student desegregation plans.

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<sup>423</sup> Dallas Independent School District (Tex.), *Confluence of Cultures: Desegregation Plan*, 1971.

<sup>424</sup> Ibid.

<sup>425</sup> “Tasby v. Estes, 342 F. Supp. 945 (N.D. Tex. 1971),” *Justia Law*, accessed January 19, 2015, <http://law.justia.com/cases/federal/district-courts/FSupp/342/945/2339938/>.

The guidelines for staff place an emphasis both on the ratio of black to white teachers in a school and on the district's non-discriminatory standards. The emphasis placed on non-discrimination appears in several forms. One policy related to staff reads, "staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, or otherwise treated without regard to race, color, or national origin."<sup>426</sup> Here the emphasis on neutrality and equality in the present, in direct opposition to foundational inequity in society, echoes federal Civil Rights laws. The plan continues to outline its aims, continuing to emphasize an undefined usage of "culture." "The District shall continue to expand its present Confluence of Cultures Staff Development Program to assist teachers and administrators in developing greater cultural awareness and greater skills in individualization of instruction."<sup>427</sup> Later in the plan a similar directive appears; "in addition, five of the ten days allocated for staff development for the 71-72 school year will be designated for an expanding program of greater cultural awareness."<sup>428</sup> What the program entails is left unstated. In each of these cases, the report presents cultural awareness as a sufficient remedy to deep-seated problems of equity.

Furthermore, the desegregation plan actually seeks very little physical desegregation. It in fact explicitly states, "It is the purpose of the Confluence of Cultures Desegregation Plan, as in all previous and future plans, to assure that each scholastic in the elementary and secondary schools shall attend the school nearest his residence subject to the exceptions and the transfer rules hereafter noted."<sup>429</sup> The plan asks district

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<sup>426</sup> (Tex.), *Confluence of Cultures*.

<sup>427</sup> Ibid.

<sup>428</sup> Ibid.

<sup>429</sup> Ibid.



personnel to review all student transportation “on a non-segregated and otherwise non-discriminatory basis.” This short mention demonstrates how the plan fundamentally seeks to meet the court’s decree without using busing as a primary remedy. However, the plan did not eschew busing entirely.

The desegregation plan gets more tepid. “This plan is designed to bring about **introductory** educational and social contacts between students of different races at the elementary level. Such preparation is needed if students are to interact successfully later with one another at the departmentalized secondary level.”<sup>430</sup> This sentence demonstrates the pervasive fear holding back administrators and supports their ultimate attempt to not actually change attendance patterns. The section that specifically addresses elementary schools states this explicitly; “This plan will strive for parity between all students of all races without changing the current attendance pattern of elementary schools.”<sup>431</sup> The authors acknowledge that this means exactly what it sounds like—schools will continue to be racially segregated. Their recommended remedy then involves supposedly altering “every aspect of the student’s education, school activity, and social development,” with the coach of “a true Confluence of Cultures.” How the district proposes doing this never receives more specific enunciation, though the authors included a proposal to use closed-circuit television as a tool for integration.

The plan ends with its effective date of August 24, 1971, at the start of the 1971-1972 school year. Yet immediately following the plan’s submission the plaintiffs’ dissatisfaction with the plan led to additional negotiations. On July 24, 1971, *The Austin Statesman* reported further delay stemming from Federal U.S. District Judge William M.

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<sup>430</sup> Ibid.

<sup>431</sup> Ibid.

Taylor, Jr.'s dissatisfaction with the three separate plans for desegregating Dallas schools, citing an "obvious" lack of compromise from the parties involved.<sup>432</sup> Taylor, making his next move independently, ultimately followed the school board's "Confluence of Cultures" plan closely but further ordered the busing of almost 9,000 students, though much of that busing would not take place because of an additional court stay in response to outraged white parents.

*The Washington Post* reported that a vast majority of Texans, 78 percent, opposed busing, including more than half of black and Mexican-American citizens in the state.<sup>433</sup> The tenor of busing in Dallas also meant that students bore the brunt of the negative experiences. In Dallas, "only black kids were bused, and they got off their buses in white Dallas to a reception of violence, kangaroo-court discipline by school officials and overt contempt from teachers."<sup>434</sup> While overt racism bolstered white parents' fears about integration, black students bore most of the physical impact of integration. This physical impact often took the form of increasingly disabling corporal punishment.

Following integration, districts around Texas defended paddling as a necessary disciplinary tool. In the 1971-72 academic year, Dallas ISD disclosed 24,305 paddling cases, almost four times as many as the previous school year. Dallas' superintendent at the time, Nolan Estes, "attributed the increase to general unrest resulting from school desegregation."<sup>435</sup> He also told reports that "he would rather resign than head a school

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<sup>432</sup> "Integration Ruling Delayed."

<sup>433</sup> Parks, "Integration Plan Went down Tubes - DISD, Judge Saw TV Time as Busing Option, but Suit Parties Didn't."

<sup>434</sup> Schutze, "Segregation Forever; How Dallas Got What It Wanted."

<sup>435</sup> Godfrey Anderson, "Pupil-Paddling Defended in Dallas," *The Washington Post, Times Herald* (1959-1973), November 23, 1972, sec. NATIONAL NEWS, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/148205298/abstract?accountid=7118>.

system where such punishment was banned.” In response to the statistics and to Superintendent Estes, Carole Duncan, an official who at the time recently formed National Committee to Abolish Corporal Punishment in Schools, highlighted the disproportionate number of minority students paddled, often without parental permission. She told the school board, “statistics indicate that when black children attended black schools in black communities with black personnel, they were not subjected to excessive punishment.” She continued, “It is a tragic admission of racial misunderstanding to acknowledge that integration of blacks into white schools has served to bring about increased physical assaults on black school children.”<sup>436</sup>

In the 1973-1974 school year, DISD further recorded 16,518 paddlings and 11,755 suspensions.<sup>437</sup> Another study notes that, “in 1973, over 3,000 paddlings per month were given in Dallas schools, some because the student did not address the teacher as ‘sir’ or for incorrect spelling.”<sup>438</sup> The following year, in March of 1975, DISD officials emphasized 22 disciplinary alternatives to corporal punishment and suspension. Officials said the reason for change was “prompted by the failure of old standby methods and partly because of the pressure of legal action.” Alternatives included the withdrawal of privileges, demerits, and in-school suspension.

A high-ranking official in the Houston Independent School District (HISD) in 1972 said that the district “may well be the corporal punishment capital of the

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<sup>436</sup> Ibid.

<sup>437</sup> “Paddling Alternatives Sought,” *The Austin American Statesman* (1973-1987), *Evening Ed.*, March 23, 1975, sec. Real Estate, <http://search.proquest.com.ezproxy.lib.utexas.edu/hnpaustinamericanstatesman/docview/1500385076/citation/9AF19D66F2274E59PQ/38?accountid=7118>.

<sup>438</sup> Ad Hoc Corporal Punishment Committee et al., “Corporal Punishment in Schools,” *Journal of Adolescent Health* 13, no. 3 (1992): 240–46, doi:10.1016/1054-139X(92)90097-U.

country.”<sup>439</sup> This dubious distinction arose from a study of corporal punishment that reported the district used paddling as a punishment 8,279 times in the past two months alone. A member of committee conducting the study, child psychiatrist Dr. Charles Shaw, said, “It sounds like the Vietnam war.” This report ultimately recommended additional approvals beyond the existing principal approval, presence of another teacher, and absence of other students at the time of punishment.<sup>440</sup>

Austin public schools attempted to curtail the use of corporal punishment in 1974, reserving the practice as a last resort for administrators.<sup>441</sup> The new policies were approved at the start of April in 1974 and covered not only corporal punishment, but the desirability of in-school suspensions, short and long-term suspensions, as well as appeal and notice.<sup>442</sup> Austin public schools reported a significant drop in corporal punishment cases in 1975. *The Austin American Statesmen* quoted school officials “calling it the smoothest fall term since pre-integration days.”<sup>443</sup> The article continues:

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<sup>439</sup> “Houston ‘Paddling’ Rate High,” *The Austin Statesman* (1921-1973), November 4, 1972, <http://search.proquest.com.ezproxy.lib.utexas.edu/hnpaustinamericanstatesman/docview/1514090448/citation/9AF19D66F2274E59PQ/40?accountid=7118>.

<sup>440</sup> Ibid.

<sup>441</sup> Carolyn Bobo, “AISD May Decide Punishment Issue,” *The Austin American Statesman* (1973-1987), *Evening Ed.*, March 26, 1974, <http://search.proquest.com.ezproxy.lib.utexas.edu/hnpaustinamericanstatesman/docview/1506529231/abstract/DF33D9FB9C2A46C4PQ/1?accountid=7118>.

<sup>442</sup> Carolyn Bobo, “AISD Punishment, Suspension Policies Okayed,” *The Austin American Statesman* (1973-1987), *Evening Ed.*, April 8, 1974, <http://search.proquest.com.ezproxy.lib.utexas.edu/hnpaustinamericanstatesman/docview/1506532082/abstract/DF33D9FB9C2A46C4PQ/2?accountid=7118>.

<sup>443</sup> Lynne Flocke, “Austin School Discipline Cases Down Sharply: Blacks Receive More Punishment Proportionately,” *The Austin American Statesman* (1973-1987), *Evening Ed.*, January 13, 1975, <http://search.proquest.com.ezproxy.lib.utexas.edu/hnpaustinamericanstatesman/docview/1503872693/abstract/DF33D9FB9C2A46C4PQ/14?accountid=7118>.

Even though school authorities are still investigating an incident last week in which a teacher allegedly belt-whipped a student, corporal punishment in the district has practically disappeared – the result of a new discipline policy that ties up the hickory stick in too much red tape to be easily administered. Yet one statistic has remained constant in this fourth year of court-ordered desegregation – blacks receive punishment in far greater proportion than their percentage of the school population.<sup>444</sup>

The article shares the disproportionate statistics, noting that during the first nine weeks of the 1974 school year black students comprised 51 percent of the students suspended, despite constituting only 13 percent of the high school population. Reporter Lynne Flynn adds, “principals and student development office officials are reluctant to say that the figures mean the blacks are actually doing more than their share of disrupting, but to deny it means the teachers and administrators are discriminating against blacks by punishing them more or differently than whites, for whatever reason.”<sup>445</sup> School officials cite busing as a contributor to the challenges and Flocke reiterates a point made by Lee Laws, the AISD coordinator of student affairs at the time:

Busing does not help the already tense situation brought about by the clash of values and cultures. Black students who are bused find their lives are getting seriously disrupted, said Ms. Law. They are taken to a school they did not choose. They feel they have no control over their lives. The resulting atmosphere is one which may be ignited by an unsympathetic teacher or a verbal catcall from a fellow student.

The article goes on to quote a black principal who emphasizes his willingness to suspend any student causing a disruption.

The federal government’s influence on juvenile justice also expanded throughout the following court-mandated integration. The Juvenile Delinquency and Youth Offense Act passed in 1961. Seven years later, the Juvenile Delinquency and Control gave the

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<sup>444</sup> Ibid.

<sup>445</sup> Ibid.

HEW the task of formulating a national approach. “By the late 1960s, black youth comprised nearly one-third the inmate population, but only about one-tenth of the high school-age population of Texas.”<sup>446</sup> Bill Bush writing about a *Texas Observer* article from 1969 notes:

Here, for the first time, episodes of racial and ethnic discrimination appeared alongside tales of abuse. Although the TYC nominally had integrated its facilities, inmates were kept separated wherever possible. For instance, guards enforced segregated seating at the cafeteria, while routinely addressing racial epithets to black and Latino youth.<sup>447</sup>

Mexican-American students personally recount of physical and verbal abuse from guards during their time at TYC facilities.

Despite black and brown students physically bearing the brunt of integration, white citizens continually revised their tactics to protect whiteness as a category and privilege in the face of busing. White parents in Dallas also took steps beyond legal challenge in response to integration, and sharp reactions to busing occurred in several arenas. Plans for busing led to white mothers and children picketing at the federal courthouse.<sup>448</sup> White residents impacted by the ruling sought to move.<sup>449</sup> In 1971, Dallas City Councilman Jessie Price urged schools children to defy busing laws by refusing to board buses.<sup>450</sup> Furthermore, *The Washington Post* described how anti-busing citizens

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<sup>446</sup> Bush, *Who Gets a Childhood?* 157.

<sup>447</sup> Ibid. 163.

<sup>448</sup> Parks, “Integration Plan Went down Tubes - DISD, Judge Saw TV Time as Busing Option, but Suit Parties Didn’t.”

<sup>449</sup> “Desegregation: Owners React At Oak Cliff,” *The Austin Statesman (1921-1973)*, August 6, 1971, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/1514529245/abstract?accountid=7118>.

<sup>450</sup> By Leroy F. Aarons, “Texas Busing Crisis Hurts President: Bus Issue Hurts Nixon in Texas,” *The Washington Post, Times Herald (1959-1973)*, August 22, 1971, sec. General, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/148060002/abstract?accountid=7118>.

stormed a Dallas school board meeting in an attempt to force an appeal of the court-ordered plan.<sup>451</sup> And in the midst of all the dissent, DISD officials continued to argue that the district did not operate a dual system, but rather that housing patterns were responsible for the segregation. “Schools should not be responsible for social engineering to bring about integration, they argued.”<sup>452</sup> However, DISD officials could not refute evidence demonstrating school boundaries were drawn to maintain segregation. In 1974, U.S. District Judge Sarah T. Hughes found DISD guilty of institutional racism.<sup>453</sup> In 1975, the Supreme Court refused to hear the Dallas Case, having already approved busing as an appropriate remedy in *Swann v. Charlotte Mecklenburg*, shutting down further appeals.<sup>454</sup>

Both African American and Mexican American civil rights groups continued their focus on education throughout the 1970s. Some desegregation did occur and a variety of sources claim Texas had the highest percentage of black students attending integrated schools in the entire country – 34 percent. Texas schools fundamentally remained segregated. “As late as 1978, one study found that 101 schools in Houston—just over half of the total number of schools in the city—remained one-race schools. Houston also still

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<sup>451</sup> Ibid. Another article in The Washington Post in August of 1971 describes the political implications of busing for then President Nixon. Citing the public reaction as “emotional and vocal,” the article notes that busing’s slated beginnings “in Dallas, Austin and Houston within three weeks, barring unforeseen developments,” while further noting threatened boycotts by citizen groups. In Parks, “Integration Plan Went down Tubes - DISD, Judge Saw TV Time as Busing Option, but Suit Parties Didn’t.”

<sup>452</sup> Parks, “Integration Plan Went down Tubes - DISD, Judge Saw TV Time as Busing Option, but Suit Parties Didn’t.”

<sup>453</sup> Schutze, “Segregation Forever; How Dallas Got What It Wanted.”

<sup>454</sup> “Dallas Desegregation Ruling Stands,” *The Austin American Statesman* (1973-1987), *Evening Ed.*, November 4, 1975, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/1500174264/citation?accountid=7118>.

had a large number of predominately Mexican American schools.”<sup>455</sup> The problems persisted and exclusionary racial policies and student protests again made headlines in 1985 as the *Associated Press* ran an article on December 3 from Hereford, Texas, entitled “Junior High Students Protest Alleged Race Discrimination,” highlighting a school walkout by Hispanic junior high school students.<sup>456</sup>

The students issued a list of 11 demands, and several protesters said they had been singled out by Anglo teachers for punishment . . . The group complained about dress codes; teachers shouting at them; strip searches; spankings without parental consent; locker searches without parental consent; punishment by isolation; and punishment by suspension. The students also said they wanted the right to go the bathroom without permission.<sup>457</sup>

The limitations of litigation focused on race lead activists interested in equity to take a different approach, one focused on the same inequities but now using the language of class rather than race to make the case for a new audience. Lawyers sought to explore segregation by class, examining how school financing structures disenfranchise students of color while also serving as a separation mechanism in their own right. In 1971, in *Rodriguez v. San Antonio Independent School District*, a federal court found the Texas public school financing system unconstitutional. The U.S. Supreme Court reversed the *Rodriguez* ruling two years later, ruling that school financing based on local property taxes did not violate the Fourteenth Amendment’s equal protection clause.<sup>458</sup> Here the

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<sup>455</sup> Behnken, *Fighting Their Own Battles*. 196.

<sup>456</sup> Associated Press, “Junior High Students Protest Alleged Race Discrimination,” December 3, 1985, <http://www.apnewsarchive.com/1985/Junior-High-Students-Protest-Alleged-Race-Discrimination/id-e15e45048b945e4c8215eafb626e7ae5>.

<sup>457</sup> Ibid.

<sup>458</sup> Cynthia Orozco E., “Rodriguez v. San Antonio ISD,” June 15, 2010, <http://www.tshaonline.org/handbook/online/articles/jrrht>; Walt Haney, “The Myth of the Texas Miracle in Education,” *Education Policy Analysis Archives* 8, no. 0 (August 19, 2000): 41, doi:10.14507/epaa.v8n41.2000; Valencia, *Chicano Students and the Courts*.



majority opinion's decision centered on the lack of sufficient proof that education is a fundamental right in the United States Constitution. Jonathan Kozol quotes O. Z. White of Trinity University in San Antonio regarding a key problem with the decision:

A lot of wealthy folks in Texas think the schools are doing a sufficiently good job if the kids of poor folks learn enough to cast a vote—just not enough to cast it in their own self-interest. They might think it fine if kids could write and speak—just not enough to speak in ways that make a dent in public policy . . . To a real degree, what is considered 'adequate' or 'necessary' or 'sufficient' for the poor in Texas is determined by the rich or the relatively rich; it is decided in accord with their opinion of what children of the poor are fitted to become, what their social role should be.<sup>459</sup>

In this case, neither the case author nor the critic notes the intersection of race and class here. In the majority decision, Justice Powell in fact disavowed any connection, writing that there was no “more than a random chance racial minorities are concentrated” in high poverty district. Justice Thurgood Marshall wrote a lengthy dissent. Analyzing the implications of the case in 1991, Jonathan Kozol writes, “the five-to-four decision in *Rodriguez* ushered in the ending of an era of progressive change and set the tone for the subsequent two decades which have left us with the present-day reality of separate and unequal public school.”

Following this decision several House and Senate bills focused ostensibly on providing some financial equalization, but ultimately led to still more legal action. Additionally, many of the proposed system remedies relied on increased administrative impacts, such as standardized testing which comprises the subject of chapter four of this work. 1984's *Edgewood vs. Kirby* resulted in the Texas Supreme Court determining that the existing funding system was unconstitutional, a decision echoed by the State District

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<sup>459</sup> Jonathan Kozol, *Savage Inequalities: Children in America's Schools*, 1st ed (New York: Crown Pub, 1991).

Judge of Travis County in 1987. Again in 1989 the Texas Supreme Court unanimously struck down the school finance system. These battles over school financing and the accompanying rhetoric are particularly important for understanding the shift to colorblind rhetoric despite persistent issues of equity. Inquiries into the role and history of segregation in Texas public schools prove foundational for other chapters because segregation allows for the disparate implementation of other practices constitutive of the school-to-prison pipeline.

### **PADDLING AND PUNISHMENT POST-INTEGRATION**

The next major federal law passed in 1974. In the United States Supreme Court Case of *Goss v. Lopez* in 1975, student alleged that suspension violated their right to due process.<sup>460</sup> In this case, the court ruled in favor of the students and the move to judiciously expel students created serious impediments to the practice. The Juvenile Justice and Delinquency Prevention sought to divert students from the traditional juvenile justice system by employing alternatives to institutionalization. In an effort to comply with the act, Texas, along with 40 other states, undertook efforts to deinstitutionalize juvenile status offenders, and in 1975, the Texas legislature “appropriated nine million dollars for the development of community-based treatment program.”<sup>461</sup>

Supreme Court ruled that juveniles had a right to formal due process in 1967.<sup>462</sup> Massachusetts and New Jersey were in fact only states to have completely abolished the practice prior to the United States Supreme Court’s 1977 ruling in *Ingraham, et al., v.*

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<sup>460</sup> Adams, “The Status of School Discipline and Violence.”

<sup>461</sup> Bush, *Who Gets a Childhood?* 201.

<sup>462</sup> In J. Patrick Mahon, “Ingraham v. Wright: The Continuing Debate over Corporal Punishment,” *Journal of Law & Education* 6 (1977): 480.

*Wright, et al.* that corporal punishment did not constitute cruel and unusual punishment.<sup>463</sup> In this particular case, two Florida students living and attending school in Dade County, which permitted corporal punishment, alleged the beatings they received from school Principal Barnes required medical attention. Ingraham received twenty licks while being forcibly held face down, leading to a painful hematoma preventing him from sitting for three weeks, all for being slow to follow a teacher's instructions.<sup>464</sup> Barnes hit the other student, Rodney Williams, in the back and head with a wooden paddle and belt, resulting a lump of the side of Williams' head that needed to be surgically removed.<sup>465</sup> In all, 16 current and former students from Drew Junior High testified to Barnes "reign of terror." Among the parties filing briefs, The National Education Association (NEA) opposed corporal punishment and the American Federation of Teachers (AFT) supported the practice.

The court examined two issues to decide the case: did paddling constitute "cruel and unusual punishment" as stipulated in the eighth amendment and second do school officials require due process to administer such a punishment. The court ultimately answered both questions negatively. On the question of the application of the eighth amendment the court majority in a 5-4 wrote the following:

The school child has little need for the protection of the Eighth Amendment. Though attendance may not always be voluntary, the public school remains an

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<sup>463</sup> Glenn, "Corporal Punishment"; John R. Vile, "Ingraham v. Wright (1977)," in *Encyclopedia of the Fourth Amendment*, ed. John R. Vile and David L. Hudson Jr., vol. 1 (Los Angeles: SAGE Reference, 2013), 355–56, <http://go.galegroup.com/ps/i.do?id=GALE%7CCX4159100415&v=2.1&u=txshracd2598&it=r&p=GVRL&sw=w&asid=b0ee2bb609d741b8c470e919c1c92517>; "Ingraham v. Wright 430 U.S. 651 (1977)," *Justia Law*, accessed February 4, 2016, <https://supreme.justia.com/cases/federal/us/430/651/case.html>.

<sup>464</sup> Mahon, "Ingraham v. Wright."

<sup>465</sup> Cynthia Price Cohen, "Beating Children Is as American as Apple Pie," *Human Rights* 7, no. 1 (April 1, 1978): 24–54.

open institution. Except perhaps when very young, the child is not physically restrained from leaving school during school hours; and at the end of the school day, the child is invariably free to return home. Even while at school, the child brings with him the support of family and friends, and is rarely apart from teachers and other pupils who may witness and protest any instances of mistreatment.

The openness of the public school and its supervision by the community afford significant safeguards against the kinds of abuses from which the Eighth Amendment protects the prisoner. In virtually every community where corporal punishment is permitted in the schools, these safeguards are reinforced by the legal constraints of the common law. Public school teachers and administrators are privileged at common law to inflict only such corporal punishment as is reasonably necessary for the proper education and discipline of the child; any punishment going beyond the privilege may result in both civil and criminal liability . . . As long as the schools are open to public scrutiny, there is no reason to believe that the common law constraints will not effectively remedy and deter excesses such as those alleged in this case.<sup>466</sup>

Legal analysis of this explanation determined that the court definitely answered that the eighth amendment only applied in the criminal context, whereas schools remained under common law control.<sup>467</sup> The key argument here around the openness of schools in communities precludes much of the history of schools examined in this dissertation. The decision, following those in 1968 and 1974 that banned corporal punishment in prisons and training schools, meant that public school children remain the only group of American citizens who may be beaten legally. As one article opined after the decision, “beating children is as American as apple pie.”<sup>468</sup>

Following *Ingraham*, the Fourth Circuit heard *Hall v Tawney* in 1980. This case hinges on a 1974 incident, when student Naomi Hall received a beating with a homemade paddle from her teacher G. Garrison Tawney, before receiving another paddling by her

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<sup>466</sup> “*Ingraham v. Wright* 430 U.S. 651 (1977).”

<sup>467</sup> Mahon, “*Ingraham v. Wright*.”

<sup>468</sup> Cohen, “Beating Children Is as American as Apple Pie.”

teacher approved and supervised by the school principal.<sup>469</sup> The severity of Hall's injuries sent her to the emergency room and resulted in a ten-day hospital stay and ongoing trauma, including possibly permanent injuries. The case ultimately articulated a standard for due process "shocks the conscience."<sup>470</sup> While many other cases have occurred in the interim, the burden of establishing a due process violation has led scholars to conclude, "Generally speaking, it would be easier to prove a criminal case of assault and battery than to prove that a teacher has violated a student's substantive due process rights in particular school disciplinary action."<sup>471</sup> In an example of this, a school official struck two Texas girls, ages five and six, because a teacher saw them giggling in the hall. Again following the precedent set in *Ingraham*, "the Federal Appeals Court ruled that there was no due process violation with excessive corporal punishment, because plaintiffs could turn to Texas common law."<sup>472</sup> The United States Supreme Court denied a review of this case in March of 1989.

New disciplinary practices emerged and grew to fill this void, including In-School Suspension (ISS). Growing in popularity in the late 70s and early 80s, ISS also very in efficacy and entails the same subjective referral process. As Adams notes, "some students find themselves skidding into ISS classrooms because of the inability of their teachers to cope with students who come from diverse social backgrounds that are often at variance with the background of middle-class teachers."<sup>473</sup>

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<sup>469</sup> Lewis M. Wasserman, "Corporal Punishment in K-12 Public School Settings: Reconsideration of Its Constitutional Dimensions Thirty Years after *Ingraham v. Wright*," *Touro Law Review* 26 (2011 2010): 1102.

<sup>470</sup> *Ibid.*

<sup>471</sup> Committee et al., "Corporal Punishment in Schools."

<sup>472</sup> *Ibid.*

<sup>473</sup> Adams, "The Status of School Discipline and Violence."

## SPECIAL EDUCATION POST-BROWN

While racial classification and segregation demonstrate one way of separating the normal citizen body from the abnormal, concepts of disability also rely on notions of normality and abnormality.<sup>474</sup> Though disparate, similar notions of a lack of fitness for the citizenry imbue both racial and ability grouping, and scientific forms of knowledge reinforce the validity and importance of each. Ability grouping relies on the medicalization of a students' condition—a formal label that indicates a student's abnormality. In this case, those marked as disabled receive a completely different educational program. With disability, the intersection of race and ability labeling retains its salience for understanding debility in the public school system. Students with disabilities comprise a substantial portion of those students impacted by school-to-prison pipeline. Students of color labeled disabled are still more vulnerable. While scientific discourses lend a guise of objectivity to which students receive such labels, this disproportionate number of students of color labeled with particular categories of disabilities throughout history raises an additional set of questions about student classification.

Addressing a group of teachers in 1963, James Baldwin notes, “. . . any Negro who is born in this country and undergoes the American educational system runs the risk of becoming schizophrenic.”<sup>475</sup> Baldwin here is referencing the simultaneity of American

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<sup>474</sup> While this again invokes Foucault, I omit that discussion here because it has been reproduced elsewhere in this project; Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd Vintage Books ed (New York: Vintage Books, 1995); Michel Foucault, *The History of Sexuality*, 1st Vintage Books ed (New York: Vintage Books, 1988).

<sup>475</sup> James Baldwin, “Chapter Eight: A Talk to Teachers,” *Counterpoints* 107 (2000): 123–31. (Delivered October 16, 1963, as “The Negro Child – His Self-Image”; originally published in *The Saturday Review*,

public school students pledging allegiance to a country supposedly guaranteeing “liberty and justice for all” and while experiencing racist practices revealing the falsity of that statement, as Baldwin notes a black student “is also assured by his country and his countrymen that he has never contributed anything to civilization” further defined by racial stereotypes. Baldwin’s description of the psychological trauma borne of living in such a society in the terms of a mental disorder, known for its disabling symptoms, demonstrates the psychological harm white supremacy. Baldwin’s “A Letter to My Nephew,” explains these themes by invoking temporal simultaneity. Addressing youth as the future of the country, Baldwin invokes the past to understand the present.

This innocent country set you down in a ghetto in which, in fact, it intended that you should perish. Let me spell out precisely what I mean by that for the heart of the matter is here and the crux of my dispute with my country. You were born where you were born and faced the future that you faced because you were black and for no other reason. The limits to your ambition were thus expected to be settled. You were born into a society which spelled out with brutal clarity and in as many ways as possible that you were a worthless human being. You were not expected to aspire to excellence. You were expected to make peace with mediocrity.<sup>476</sup>

Baldwin’s explanation demonstrates the ongoing, historically grounded, debilitation of black students by evoking their disabling, yet Baldwin is not referencing the shifting field of disabilities studies, which invoked Civil Rights rhetoric in the effort to expand protections and services to citizens with disabilities.

In the ongoing development of the field of disability studies, several scholars credit President John F. Kennedy’s public acknowledgment of his disabled sister as pivotal moment in national intervention, leading to his 1961 creation of the President’s

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December 21, 1963, reprinted in *The Price of the Ticket*, Collected Non-Fiction 1948-1985, Saint Martins 1985

<sup>476</sup> James Baldwin, *The Fire Next Time* (New York: Dell, 1988).

Panel on Mental Retardation.<sup>477</sup> The panel issued a report entitled *A Proposed Program for National Action to Combat Mental Retardation*, with recommendations presuming the fixity of problems of handicapped children independent of educational opportunity.<sup>478</sup> A year later, in 1963, Kennedy's organized both a White House panel on mental retardation and created a Division of Handicapped Children and Youth, affiliated with the U.S. Office of Education.<sup>479</sup> Legislators further amended the Elementary and Secondary Education Act (ESEA) to include programs for handicapped children in 1966.<sup>480</sup> Learning Disabled (LD) formally received recognition as a category as an amendment to Title VI of the Elementary and Secondary Education Act in 1969.<sup>481</sup> While the details of the category remain a matter of dispute the solidification of the category led to its increasing prevalence, with one million children labeled LD within a year.<sup>482</sup> Texas further examined the problem in a 1966 plan entitled *The Texas Plan to Combat Mental Retardation*, a produce of the Governor's Interagency Committee on Mental Retardation Planning.<sup>483</sup>

In 1968, the Texas Education Agency released another revision of "Guidelines for developing a special education program for educable mentally retarded children and

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<sup>477</sup> Ibid. 13; Osgood, *The History of Special Education*.100. Additionally In 1955, the Council for the Exceptional Children's Journal made the case for ending the segregation of disabled students.

<sup>478</sup> United States, *A Proposed Program for National Action to Combat Mental Retardation; Report to the President* (Washington: For sale by the Superintendent of Documents, U.S. Govt. Print. Off, 1962).

<sup>479</sup> Osgood, *The History of Special Education*. 101.

<sup>480</sup> Levine, *PL94-142*. Add others as this is a fairly common assertion.

<sup>481</sup> Bernadette Baker, "The Hunt for Disability: The New Eugenics and the Normalization of School Children," *Teachers College Record* 104, no. 4 (2002): 663.

<sup>482</sup> Ibid. Quoting Kidder-Ashley, Deni, & Anderston, 2000.

<sup>483</sup> Texas and Texas, *The Texas Plan to Combat Mental Retardation* (Austin: The Committee, 1966).



youth in the local community.”<sup>484</sup> This update, a revision of the 1956 edition undertaken in the summer 1966, aimed to provide pedagogical materials for “educable mentally retarded children and youth.” The forward indicates a need for such materials emerged following the establishment of classes for educable mentally retarded students in 1951 as part of the Minimum Foundation School Laws.<sup>485</sup> This document again reinforces the Texas State Board of Education definition for a “the school-age educable pupil who is mentally retarded.” The definition provided reads as follows:

A child, whose intelligence quotient ranges between 50 and 70, and who is incapable of being educated in the regular classroom is considered educable mentally retarded. He may be expected to profit from an organized program designed to develop physical, personal and social competencies, and vocational proficiencies.<sup>486</sup>

While testing receives more attention in the following chapter, the TEA’s guidelines offered here reinforce the perceived validity of these tests, using a standard deviation from a norm on various scales as definitive classification of educable mental retardation status. The scales mentioning include the Arthur Point Scale of Performance Tests, the Revised Stanford Binet Tests of Intelligence, and the Wechsler Intelligence Scale for Children.

The guidelines further outline a teacher’s responsibility:

A person with mental retardation needs to be accepted and valued as an individual who has a handicap. One of the most important functions of a teacher is to contribute to a retardate’s development of a realistic but adequate self-image. The retardate’s most important task is to develop a self-concept which will allow him to respect himself. A retardate may see that constructive image first reflected in

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<sup>484</sup> Texas Education Agency, *Guidelines for Program Development; Special Education*, Rev, Bulletin 673 (Austin, Tex: Texas Education Agency, 1968).

<sup>485</sup> Ibid. iii.

<sup>486</sup> Ibid. 5.

his relationship with a teacher who helps him to identify and appreciate his assets and who helps him to evaluate and to understand his limitations.<sup>487</sup>

The guidelines further assert the importance of discipline in this teacher's responsibility. The subjectivity of the teacher presents another situation to be addressed through discipline. The criteria for graduation demonstrate the aim—assimilation and economic productivity. “When a student has proven himself capable of holding a job for at least one semester and has demonstrated acceptable behavior patterns, he has completed the seven curriculum levels and is ready for school graduation and receives a diploma.”<sup>488</sup> Importantly, this report's authors frame this discussion in terms of education's social importance, opening with the rationale that “education is the social instrument through which the culture of a people is perpetuated, implemented, and refined,” before calling for the importance of school systems developing “diversified programs to satisfy diversified needs.”<sup>489</sup>

In September 1968, Management Services Associates published their report *Special Education in Texas*.<sup>490</sup> The Management Services Associates report “grew out of [their] in depth examination of the State Plan to Initiate, Expand and Improve Programs and Projects for the Education of Handicapped Children under Title VI of the Elementary and Secondary Education Act of 1965.”<sup>491</sup> This report addresses what it calls “the problem of criticism,” noting that “one of the unfortunate manifestations of these intense and broad efforts at re-examination and reappraisal of existing public education programs

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<sup>487</sup> Ibid. 115.

<sup>488</sup> Ibid. 104.

<sup>489</sup> Ibid. 1.

<sup>490</sup> Management Services Associates, *Special Education in Texas* (Austin, 1968).

<sup>491</sup> Ibid.

is the tendency to provoke criticism from persons both inside the profession as well as the public in general.”<sup>492</sup> The report constitutes a crisis because of how it calls into question the current practices of education students. The problem of what and how we know also constitutes a topics for the authors—using a heading “Education – the lack of scientific basis,” the report emphasizes that “education today is a profession working hard to establish sound techniques based on scientific findings,” while highlighting that such knowledge’s limitations mandate further research.

The report devotes some space to the history and evolution of special education in Texas, citing the 1945 creation of class for physically and speech handicapped students. The report reads, “Moreover, since its inception in 1949, the Texas Education Agency and its board have always based their policy decisions on the premise that ‘Texas schools are committed to the principle of education for all children, regardless of variance in abilities.’”<sup>493</sup> The authors cite this invocation of equity as the premise undergirding the evolution of special education services in the state. Describing the character of special education services in the state, the report outlines the “groups of clientele.” The groups include blind, physically handicapped, deaf, mentally retarded—a group further differentiated into “educable” and “trainable” according to I.Q. score, speech and hearing cases, deaf blind and non-speaking blind, and emotionally disturbed children (present with the caveat that this last category “while still considered somewhat in the pilot unit state of development, it is anticipated this area of the program will undergo continuing growth”).<sup>494</sup> The report leaves this list of categories with an additional caveat; “while

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<sup>492</sup> Ibid. 2.

<sup>493</sup> Ibid. 6.

<sup>494</sup> Ibid. 6.

there has been increasing pressure on the Legislature to add other basic ‘categories of handicapped children,’ the above represents the significant ‘spectrum’ covered by its existing services.”<sup>495</sup> The authors do not explain the presence of the quotation marks around particular words and phrases.

The Texas special education guidelines published in 1968, noticeably following federal Civil Rights legislation, open with the following rationale:

Children are handicapped by mental retardation, but they retain needs and rights in common with all children. Because they do not remain children but become adults, the primary goal in their education is community life adjustment. With adequate education both normal and mentally retarded children learn to become contributing members of society.<sup>496</sup>

The guidelines that follow intend to help establish and evaluate programs across the state. Descriptive definitions in the *Guidelines for Program Development* quote the American Association on Mental Deficiency’s 1960 “inclusive description of mental retardation.” While the description also contains personal characteristics and standards for placing children in classes, the definition hinges on a child’s intelligence quotient falling between 50 and 70, with corresponding scores on other frequently used intelligence tests listed.<sup>497</sup> Because 1968 Management Services Associates report grew out of the review of programs and projects for the Education of Handicapped Children in Elementary and Secondary Education Act of 1965. The report notes:

We must also bear in mind that Texas, unlike many states, has two large minority groups (Negro and those of Spanish-speaking ancestry) within it and the children of these minority groups present special education challenges that are somewhat

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<sup>495</sup> Ibid. 7

<sup>496</sup> Texas Education Agency, *Guidelines for Program Development; Special Education*.

<sup>497</sup> These tests include, in addition to I.Q., the Arthur Point Scale of Performance Tests, the Revised Stanford Binet Tests of Intelligence and the Wechsler Intelligence Scale for Children.

unique and certainly more complex than children from families where language and cultural habits present no challenge to the teacher.

Here the invocation of the “language and cultural habits” of “Negro and Spanish-speaking ancestry” students, elucidates stereotypes and assumptions regarding individual deficiency, popular at the time and still deeply embedded in our culture today. Furthermore, this framing reveals several key assumptions about the authors and the Texas’ school system, particularly that teachers do not share the “language and cultural habits” of “Negro and Spanish-speaking ancestry” students.

Yet the reports clear lack of interest in racial or ethnic equity do not preclude it from presenting an overall recommendation aimed at increasing educational opportunity for students: broaden the concept of special education. Management Services Associates’ argue that the evolution of Texas services to provide for particular “categories of problem,” have led to assessing children by problem “label.” Noting the rigidity of such an approach, the report makes several recommendations designed to shift the emphasis in special education from a “focus on the particular handicap itself to the individual child and his need educationally.” This emphasis directly impacts the first recommendation, “that the Texas Education Agency, through its Special Education Division staff, undertake a continuing program of public education aimed at the replacing of emphasis from the functional handicap of the child to the special education needs of the child himself.”<sup>498</sup> Within this recommendation, the report outlines the importance of involving families. Here the report again reveals some foundational assumptions through a discussion of the lack of programs that assist the family in understand and assisting with the special education program’s intended outcomes. Referring to the smaller number of private organizations attempting to provide such service to families, the report reads:

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<sup>498</sup> Management Services Associates, *Special Education in Texas*. 10.

Also, their coverage tends to be limited primarily to the middle-income families (not by choice, but circumstances) since in the lower income groups the problem of a handicapped child often lies ‘buried’ until it comes to the attention of the public school authorities. Then, due to lack of education, non-cohesive family units, economic pressure, and sometimes fatalistic apathy, it becomes extremely difficult to enlist the effective aid of such families.<sup>499</sup>

While the characterization of low-income groups may be designed to demonstrate need for additional services, the stereotypes and assumptions promote the ideal of individual deficiency in low-income families. The second recommendation encourages the development of three Special Education pilot programs emphasizing the child’s education needs with an educational spectrum extended into the family unit.<sup>500</sup> Here again, the report notes, “one of the most complex areas of problem they must resolve is how to penetrate into the lower income families with a sustaining educational program.”

The report moves on to discuss goals, bringing some historical perspective to the discussion. Contrasting early special education programs emphasis creating productive citizens out of those deemed potentially state dependent with the quote of an educator asserting “if Special Education services merely help a handicapped person to live a more enjoyable life, then we will have accomplished our goal,” the report refutes any idea of the two concepts merging at the time of its publication.<sup>501</sup>

The fact that there has been a rapid growth of programs for handicapped children with lower productivity potential, such a trainable mentally retarded, would tend to prove that the two goals concepts are beginning to merge. We do not believe this is the case. Our interviewing of legislators and other public officials concerned with providing legal authorization for such services, as well as funding, disclose that they still approach these programs as being economically desirable because the students therein will become more self sufficient. There is a growing disenchantment with the lack of effectiveness of such programs, however. As one

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<sup>499</sup> Ibid. 11.

<sup>500</sup> Ibid. 12

<sup>501</sup> Ibid. 14.

legislator put it, ‘From what I see and hear, educators just aren’t practical enough with these lower I.W. cases. They have to teach them more things about the problems of day-to-day living, holding a job, and working with other people.’<sup>502</sup>

The authors cite such philosophical differences as a potential barrier to future funding.

The report further features the authors arguing that they support “more careful transfer” of students into special education classes.<sup>503</sup> The report also recommends a minimum Statewide Special Education program, with periodic audits by the TEA. Part of the rationale for such a program again rests on matters of dependency; “Since the State assumes the responsibility for the care of handicapped persons later in their life if they are dependent, it is illogical for them not to do all that is possible to prevent a state of dependency from arising.”<sup>504</sup> While the report’s first five recommendations focus on special education, the authors devote the second chapter of the report to “the Relationship of Special Education to Other State Programs for Handicapped Persons.”<sup>505</sup> Here the report again provides some historical perspective, providing some key milestones previously discussed in this chapter and some not yet mentioned. The State Department of Health, created in 1879 “to protect and promote the health of the people of Texas,” continues, at the time of the reports publication, to run a substantive crippled children’s program.<sup>506</sup> The report also covers the Legislature’s 1965 creation of the Department of Mental Health and Mental Retardation. Among those government agencies transferred to the Department’s purview, “schools for mentally retarded persons” comprised part of the

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<sup>502</sup> Ibid. 14.

<sup>503</sup> Ibid. 16.

<sup>504</sup> Ibid. 19.

<sup>505</sup> Ibid. 21.

<sup>506</sup> Ibid. 23.

larger category of “Mental retardation services.”<sup>507</sup> This act, H.B. No. 3 of the 59th Legislature R.S., defines a “mentally retarded person” as such: “any person other than a mentally disorder person whose mental deficit requires him to have special training, education, supervision, treatment, care of control in his home, community, or in a State school for the mentally retarded.”<sup>508</sup> The report then highlights some inconsistencies in the following legislative session, particularly around jurisdiction for “teachable mentally retarded children.”

In June of 1968 the Department was operating seven special schools for the mentally retarded: two in Austin and one each in Abilene, Denton, Mexia, Lufkin and Richmond. Total enrollment was about 12,000 students, and a “waiting list” for admission persistently hovered at between 1,200 and 1,400 applicants. New schools were under construction at Lubbock and Corpus Christi. Each special school constitutes an independent school district, and participates in the per capita distribution of the State’s Available School fund for school-age children.<sup>509</sup>

Simultaneously the Central Education Agency administrative structure contained a Division for Vocational Rehabilitation and Special Education, which, in 1968, administered authorized programs in public schools for most major categories of special education included in the report, including separate programs for the educable and trainable mentally retarded and a ‘pilot program’ for emotionally disturbed children.<sup>510</sup>

The report goes on to cite several other government agencies charged with providing services to those categorized as handicapped. The Commission for Indian Affairs inclusion in the list of Departments involved special education opens with the report’s authors writing that, “Texas is the only one of the 50 states that looks after its

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<sup>507</sup> Ibid. 25.

<sup>508</sup> Ibid. 25.

<sup>509</sup> Ibid. 27.

<sup>510</sup> Ibid. 29-30.



own Indians.”<sup>511</sup> The connection includes the commission’s emphasis on “the assimilation of young adults into the State’s regular society.” Also listed among these agencies, that the Texas Youth Council oversees “three State homes for orphaned and neglected children, and four correctional schools for delinquent boys and girls” receives mention.<sup>512</sup> While the State home provides education through contractual relationships with nearby public schools, the educational program at the correctional schools receives two paragraphs of explanation. The first:

The correctional schools have two major “on-campus” programs: academic education, which often includes remedial reading; and vocational training. In 1965, when the Gatesville School found that about one-fifth of delinquent boys being committed there were dyslectics, special teaching techniques for them were substituted for normal methods. Some dyslectic children leaped as many as five grades in a nine-months period, and the average progress was two and one-half grades in a normal school year, using standard achievement tests.<sup>513</sup>

The second:

Correctional schools also receive some mental retardates. The explanation is found in what some judges would call ‘practical necessity.’ Faced with a mental retardate who is disturbing the community, and knowing that a long waiting list inevitably will delay the youngster’s admission to a special school, he is adjudged delinquent and quickly committed to a State correctional school.<sup>514</sup>

This intersection of discipline and disability represents a larger pattern and practice rather than an anomaly. The report also includes the Department of Corrections in this discussion of Departments intersecting with disability. The authors write, “Among inmates of the Texas prison there is a curious relationship between language disability

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<sup>511</sup> Ibid. 35.

<sup>512</sup> Ibid. 36.

<sup>513</sup> Ibid. 36

<sup>514</sup> Ibid. 37.

and criminality.” Citing Gray-Votaw-Rogers achievement tests from the 1950s, the authors note that 55.6% of incoming inmates tested at fifth grade or below.<sup>515</sup> Further statistics regarding illiteracy and prisoners demonstrate a clear racial disparity; “An analysis of illiterate prisoners enrolled in the Department of Corrections’ adult basic education program showed that 54/7% of them were Negro, 25.2% were white, and 20.1% were Mexican-Americans.”<sup>516</sup> The report offers no further background or analysis for these figures. Instead, the reports authors offer up these pieces of evidence in order to bolster their recommendation for the establishment of a coordinating council.

The third chapter of the report focuses specifically on medicalization, as “the medical profession continues to be the chief source of professional identifications of handicapping conditions.”<sup>517</sup> The report recommends “the Texas Education Agency, Special Education Division and the Deputy Commissioner for Mental Retardation, develop a joint plan of action for the evolution of diagnostic centers.” Under the category of “identification slippage,” the report further notes that several categories emerge only in the classroom setting. While the report fails to consider other reasons the children may struggle in a classroom setting, including a mismatch with the norms of the space, the report does tackled some the inherent challenge in the medical labeling of disability, particularly calling out the deficit-based nature of the assessment system.

The common concern of medical scientists lies with the origin and cause of the handicapping condition, its precise location and character, and with the means for correcting or ameliorating it. That very emphasis tends to obscure the remaining capabilities of the child, his sensory and cognitive abilities to interact

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<sup>515</sup> Ibid. 37.

<sup>516</sup> Ibid. 37.

<sup>517</sup> Ibid. 41.

meaningfully with his environment, which are the major concerns of the teacher.<sup>518</sup>

The report continues:

Medical diagnostic terms are carried over into enacted laws, and thence into Special Education classes of public schools. An unintentional consequence is that Special Education is built upon pupil weaknesses or handicaps, rather than upon pupil strengths or capabilities. The negative is emphasized, rather than accenting the positive.<sup>519</sup>

The authors then return to the problem of labeling. Arguing both that labels communicate little about an individual's intrinsic merits and fail to maintain consistency across state lines, the authors assert, "However useful and legitimate may be the origin of the labels, medical diagnosis is only the beginning of treatment. It is not the end."<sup>520</sup> Yet while cautioning against particular negatively connoted labels, the authors also lambaste the term "learning disabilities," as "a label that means even less than those it replaces."<sup>521</sup>

The authors support furthering diagnostic methods as a potential solution.

Still, the report asserts that future financing for such programs rests on matters of supposedly alleviating state dependency, including the burden on correctional schools. The report continues, "Faced with a mental retardate who is disturbing the community, and knowing that a long waiting list inevitably will delay the youngster's admission to a special school, he is adjudged delinquent and quickly committed to a State correctional school." Here the subjective act of disturbing the community is grounds for punishment rather than rehabilitation—a problem this report calls for remedying. This report implicitly

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<sup>518</sup> Ibid. 44.

<sup>519</sup> Ibid. 45.

<sup>520</sup> Ibid. 45.

<sup>521</sup> Ibid. 46.

acknowledges the debilitation of non-white, non-English speaking communities, yet suggests no remedy beyond increasing state administrative and custodial capacities.

In the same year the Management Services Association published their report, Lloyd Dunn called out special education as a field. Dunn's 1968 critique of special education argues that overrepresentation of ethnic and language minority students in self-contained special education classes raises significant civil rights and educational concerns." In lieu of an abstract, Dunn wrote a preface that reads:

I have been honored to be a past president of The Council for Exceptional Children. I have loyally supported and promoted special classes for the educable mentally retarded for most of the last 20 years, but with growing disaffection. In my view, much of our past and present practices are morally and educationally wrong. We have been living at the mercy of general educators who have referred their problem children to us. And we have been generally ill prepared and ineffective in educating these children. Let us stop being pressured into continuing and expanding a special education program that we know now to be undesirable for many of the children we are dedicated to serve.<sup>522</sup>

Dunn chastises the special education for referring students that general educators do not wish to work with, later expanding and clarifying his argument to specify that he's referring to what he calls "low status" children. Dunn's low status children designation primarily includes non-white students, but also "children from other nonmiddle class environments." Dunn explains how problematic special education labels become within this context and returns to the issue of education and civil rights:

This expensive proliferation of self contained special schools and classes raises serious educational and civil rights issues which must be squarely faced. It is my thesis that we must stop labeling these deprived children as mentally retarded. Furthermore we must stop segregating them by placing them into our allegedly special programs.<sup>523</sup>

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<sup>522</sup> L. M. Dunn, "Special Education for the Mildly Retarded: Is Much of It Justifiable?," *Exceptional Children* 35 (September 1968): 5-22.

<sup>523</sup> *Ibid.*, 6.

Dunn's argument presages this dissertation's argument regarding disability as a racial project, demonstrating special education's use as a debilitating mechanism. Dunn is very clear about his recommendation for what needs to occur; "A moratorium needs to be placed on the proliferation (if not continuance) of self contained special classes which enroll primarily the ethnically and/or economically disadvantaged children we have been labeling educable mentally retarded."<sup>524</sup> While Dunn recognizes some potential limitations regarding his proposed changes to special education, he unequivocally encourages change and expresses excitement at existing legislation that may prompt such a transformation.<sup>525</sup>

Despite Dunn's attempted intervention in the field, special education around United States and specifically within Texas continued to grow before systemic change occurred. Between 1966 and 1972 spending on "public schools programs for handicapped children tripled," reaching two billion by 1972.<sup>526</sup> However, this growth was accompanied by attempted special education reforms. Also in 1972, state legislators

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<sup>524</sup> Ibid., 11. Interestingly, part of what Dunn hopes for the future is more "scientific" assessment. He writes, "Like the country doctor versus modern medicine, special education in the next fifty years will move from clinical intuition to a more precise science of clinical instruction based on diagnostic instruments which yield a profile of abilities and disabilities about a Specific facet of behavior and which have incorporated within them measures of a child's ability to learn samples or units of materials at each of the points on the profile. If psychoeducational tests had these two characteristics, they would accomplish essentially the same thing as does the diagnostic approach described above—only under more standardized conditions." Quote from p.13.

<sup>525</sup> Dunn includes a lengthy footnote with this caveat: "By ignoring genetic influences on the behavioral characteristics of children with learning difficulties, we place responsibility on an inadequate society, inadequate parents, unmotivated pupils, and/or in this case inadequate teachers. Taking this extreme environmental approach could result in placing too much blame for failure on the teacher and too much pressure on the child. While we could set our level of aspiration too high, this has hardly been the direction of our error to date in special education of the handicapped. Perhaps the sustained push proposed in this paper may not succeed, but we will not know until we try it. Insightful teachers should be able to determine when the pressures on the pupil and system are too great." Quote p. 13-14.

<sup>526</sup> James J. Gallagher, "Phenomenal Growth and New Problems Characterize Special Education," *The Phi Delta Kappan* 55, no. 8 (April 1, 1974): 516–20.

introduced 800 bills with provisions for handicapped children, approximately 250 of which became laws.<sup>527</sup> However, the recognition of the role of race in growth of special education does not appear in much of this legislation which continues to focus on expanding access to services period, attempting to acknowledge the continuing historical disenfranchisement of students by ability without attention to its intersection with race. Texas Senator Richard Yarborough introduced the *Children with Learning Disabilities Act of 1969* to Congress, and presented both a clear rationale for the necessity of expanding education and the problem of decoupling race. Yarborough first speaks to his own legislative record noting the efforts to “strengthening the capability of the schools of our land to provide quality education for all children.”<sup>528</sup>

In addition to providing the means to improve the educational systems, Congress has, as we so well know, given special attention to those unfortunate children whose special needs the education system must satisfy if they are to develop to their potential and participate as first class citizens in our society. I am referring to our children who suffer from extreme economic or environmental deprivation, or from physical or mental handicaps. Not only have we set a goal for excellence in education, but we have made a basic commitment in our nation to provide educational opportunity to every child.<sup>529</sup>

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<sup>527</sup> 1972 also marked a victory in a court case in San Diego. *Time* magazine described the case as follows, “It is all too common for school systems to administer IQ tests and then confine the low scorers to “special” classes for the mentally retarded or emotionally disturbed. In San Diego, attorneys representing 20 black and Mexican-American student plaintiffs argued that the city’s Unified School System had no right to make such placements on the basis of standard IQ tests designed for white middle-class students. Retesting by an outside psychologist indicated that all but two of the children were actually of at least average intelligence and the exceptions were borderline cases. The school district did not admit fault, but it did agree to a settlement, approved by the U.S. District Court, under which 2,500 improperly placed students will receive a token payment of \$1 each. Moreover, the district promised to eliminate “racial, cultural, environmental or linguistic bias” from all future IQ tests administered to schoolchildren in San Diego.” “Who’s Retarded?,” *Time* 100, no. 10 (September 4, 1972): 56.

<sup>528</sup> Ralph W. Yarborough, “The Learning Disabilities Act of 1969, A Commentary,” *Journal of Learning Disabilities* 2, no. 9 (September 1, 1969): 438–40, doi:10.1177/002221946900200901.

<sup>529</sup> *Ibid.*

Here Yarborough does not explicitly mention race and instead promotes the expansion of special education through universalist rhetoric and the promise that additional instructional attention to children who “suffer” from a variety of conditions will allow them to participate “as first class citizens in our society.” This promise evidences a belief that special education expansion is a tool for increasing equity.

A summary of problems facing special education preceding initial federal legislation appears in an article by James Gallagher in *The Phi Delta Kappan* in 1974. Gallagher summarizes several of the key mechanisms leading to particularly racialized iteration of special education, without explicitly mentioning race. Gallagher writes:

1. For many children testing does not accurately measure their learning ability.
2. The administration of tests is often performed incompetently.
3. Parents are not given an adequate opportunity to participate in the placement decision.
4. Special education programming is inadequate.
5. Personal harm created by improper placement is irreparable.<sup>530</sup>

Importantly, Gallagher’s characterization of “personal harm” demonstrates the injury that occurs with placement in this supposedly protective category. Special education in 1974 thus actively disables, through personally harming students, and continues the historical debilitation of students of color. A combination of legislation and activism led to attempts for reform and both the institutionalization of modern special education and its critiques laid the groundwork for the passage of *The Education for All Handicapped Children Act of 1975* (Public Law 94-142).<sup>531</sup>

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<sup>530</sup> Gallagher, “Phenomenal Growth and New Problems Characterize Special Education.”

<sup>531</sup> A number of cases precede the passage of The Education for All Handicapped Children Act of 1975 including, but not limited to, 1971’s *Pennsylvania Association for Retarded Children v. the Commonwealth*, in which the United States district court ordered the state to provide education of the plaintiffs at public expense. This case adjudicated that states had to provide education for *all* students, also known as “zero reject.” In Edward B. Fiske, “Special Education Is Now A Matter of Civil Rights: An Issue of Civil Rights,” *New York Times*, April 25, 1976, sec. Spring Survey Of Education.

Public Law 94-142 attempts to remedy some of the clear pitfalls of the existing system. Elisa Hyman, Dean Hill Rivkin, and Stephen A. Rosenbaum note, “Congress recognized that without federal pressure school districts frequently did not serve disabled children properly, but instead excluded them from school, warehoused them in segregated special education classes, or left them in regular classes with no services to ensure that they could learn.”<sup>532</sup> This law, not unlike *Brown v. Board*, set a federal precedent that simultaneously initiates substantial legal changes and provided minimal guidance on mechanisms of change. While the ambiguity of “all deliberate speed” ensured *Brown* had no teeth, the Act failed to specify what constitutes an “educational need.”<sup>533</sup> The EAHCA encouraged but did not mandate the provision of educational services for students with disabilities. The six tenets of the original law include a free and appropriate education, the least restrictive environment, due process, parental participation, nondiscriminatory identification and evaluation, and the individualized education program.<sup>534</sup> Key issues addressed with Public Law 94-142 included parent voice, formal teaching plans, proof of administrative compliance, and, most importantly, appropriate education for students. The key measures designed promote educational change for student included individualized educational planning, education in the least restrictive environment, and assurances of nondiscriminatory evaluation—primarily as it

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<sup>532</sup> Elisa Hyman, Dean Hill Rivkin, and Stephen A. Rosenbaum, “How Idea Fails Families without Means: Causes and Corrections from the Frontlines of Special Education Lawyering,” *American University Journal of Gender, Social Policy & the Law* 20 (2012 2011): 107.

<sup>533</sup> Dennis E. Cichon, “Educability and Education: Filling the Cracks in Service Provision Responsibility under the Education for All Handicapped Children Act of 1975,” *Ohio State Law Journal* 48 (1987): 1134. Cichon however also argues that the Act intended to eliminate the distinction between educational and non educational needs and argues that the congressional intent is that educational responsibility should be liberally construed to meet the developmental needs of even the most severely handicapped.”

<sup>534</sup> Marshall Strax, Carol Strax, and Bruce S. Cooper, eds., *Kids in the Middle: The Micropolitics of Special Education* (Lanham, Md: Rowman & Littlefield Education, 2012).



pertained to testing students in their first language. While Public Law 94-142 provided a substantial victory for disabilities activists drawing on Civil Rights rhetoric, here again analyzing the crisis the case creates reveals the categories of disability as sites of contestation. “Specific learning disabilities” received recognition as a new disability category in The Education for All Handicapped Children Act of 1975.

Following the passage of Public Law 94-142, studies continued to demonstrate disparities in who gets special education. A 1981 report from the U.S. Government Accountability Office cites several statistics regarding the “disproportionate share of minority children” in special education, including “forty-one percent of black students in special education programs in the school year 1978 were in classes for the educable mentally retarded as compared with only ten percent of Asian American students receiving special education and 17 percent of Hispanic students receiving services.”<sup>535</sup> The table reproduced on the following page shows the full breakdown of special education category by race/ethnicity from the report, demonstrates clear trends among racial groups and this disproportionate representation of black students classified as educable mentally retarded. The report does not provide a clear explanation of the reasons for these disparities but posits that biases in child referral and assessment procedures, including teacher attitudes and judgments, state definitions of handicapped conditions, and school district program limitations, contribute to the disproportionate representation of “certain types of children” in special education.<sup>536</sup>

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<sup>535</sup> “Education,” iii.

<sup>536</sup> “Education.” Other key statistics from this report include that twice as many male students received special education.

TABLE 4.1

DISTRIBUTION OF CHILDREN RECEIVING SPECIAL EDUCATION BY  
NATURE OF HANDICAPPING CONDITION AND RACE/ETHNICITY,  
SCHOOL YEARS 1978-79 and 1976-77 (IN PERCENTS)  
(notes a, b, c, d)

School year 1978-79		RACE/ETHNICITY				
Handicapping condition	American Indian	Asian American	Black	White	Hispanic	
Educable mentally retarded	22.6 <u>b/</u>	10.0	41.0	18.1	16.7	
Trainable mentally retarded	3.0	4.1	4.7	3.3	4.0	
Emotionally disturbed	4.4	2.7	6.0	5.0	5.0	
Learning disabled	46.0	34.0	26.3	39.2	44.0	
Speech impaired	<u>24.0</u>	<u>49.3</u>	<u>22.1</u>	<u>34.5</u>	<u>30.2</u>	
Totals <u>c/</u>	<u>100.0</u>	<u>100.1</u>	<u>100.1</u>	<u>100.1</u>	<u>99.9</u>	
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School year 1976-77 d/		RACE/ETHNICITY				
Handicapping condition	American Indian	Asian American	Black	White	Hispanic	
Educable mentally retarded	25.7	11.3	45.7	20.6	19.7	
Trainable mentally retarded	3.1	4.3	4.8	3.4	4.1	
Emotionally disturbed	4.2	2.2	5.2	4.7	4.4	
Learning disabled	46.0	28.0	23.0	37.8	40.7	
Speech impaired	<u>21.1</u>	<u>54.2</u>	<u>21.3</u>	<u>33.5</u>	<u>31.1</u>	
Totals <u>c/</u>	<u>100.1</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>	

a/Source: Fall 1978 and Fall 1976 Elementary and Secondary School Civil Rights Surveys.

b/Interpret as 22.6 percent of all American Indian students who were in special education in school year 1978-79 were in an educable mentally retarded program.

c/Totals may not sum to 100 due to rounding.

d/Analysis is limited to the five handicapping conditions presented.

Figure 10: Table "Distribution of Children Receiving Special Education By Nature of Handicapping Condition and Race/Ethnicity, School Years 1978-1979 and 1976-1977," from the 1981 Office of Government Accountability Report "Disparities Still Exist in Who Gets Special Education."

Ultimately, the report offers question for additional exploration to truly understand the clear disparities in which students are adjudicated as having a particular “handicapping condition.” The 1981 Office of Government Accountability report also shows an exponential increase in students labeled with the handicapping conditions listed table on the next page from 1976-1981. This dissertation argues that this moment of forced integration in many school districts prompts a diffuse but recognizable pattern of using special education to segregate by race. While each district, school, and classroom referral undoubtedly looks different, the overall trend of disability’s continued and increasing deployment as a racial project stands out. Despite repeated studies demonstrating the disproportionate representation following special education’s institutionalization, the next major set of amendments to the Act did not occur until 1990. While this chapter explores the deliberate responses of white actors to enact, slow, and disrupt desegregation, the next chapter demonstrates the transformation to discussions and practices about race and ability in public schools along with the ascendancy of neoliberalism.

## Chapter 5: Risk, Amnesia, Testing, and Ticketing, 1980-2001

We must emphasize that the variety of student aspirations, abilities, and preparation requires that appropriate content be available to satisfy diverse needs. Attention must be directed to both the nature of the content available and to the needs of particular learners. The most gifted students, for example, may need a curriculum enriched and accelerated beyond even the needs of other students of high ability. Similarly, educationally disadvantaged students may require special curriculum materials, smaller classes, or individual tutoring to help them master the material presented. Nevertheless, there remains a common expectation: We must demand the best effort and performance from all students, whether they are gifted or less able, affluent or disadvantaged, whether destined for college, the farm, or industry.<sup>537</sup>

This quote from 1983's "A Nation at Risk" demonstrates several key themes of this chapter. First, the establishment of risk evokes a level of uncertainty about future stability that authorizes intervention. This chapter synthesizes the convergence of two narratives already present in this project to explore their meaning for the school-to-prison pipeline: one narrative reveals the commitment to white supremacy underlying the development of the American public school system and the other coming at this specific moment regarding the ascendancy of economic indicators as key metrics of success. Amnesia plays an important role both in neoliberalism and in this chapter. Erica Meiners, who draws on Charles Mills' *Racial Contract* and the work of other scholars, writes, "a very particular kind of *willful public ignorance* is produced that maintains the inevitability of school failure and incarceration."<sup>538</sup> This production of forgetting drives changes to transformation of systems of punishments, including but not limited to testing and ticketing.

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<sup>537</sup> "Archived: A Nation at Risk," Evaluative Reports; Policy Guidance, accessed May 11, 2009, <http://www.ed.gov/pubs/NatAtRisk/title.html>.

<sup>538</sup> Erica R. Meiners, *Right to Be Hostile: Schools, Prisons, and the Making of Public Enemies* (Routledge, 2007), 19; Charles W Mills, *The Racial Contract* (Ithaca, N.Y: Cornell University Press, 1997).

Two texts from the 1980s exemplify this particular discourse of crisis that authorizes the further expansion of testing and codification of students: A “Nation at Risk” and “To Save Our Schools, To Save Our Children.”<sup>539</sup> This moment of crisis in American education hardly constitutes the first of its kind; discussion of educational failure has been a constant in the history of American public schools. However, the public presentation of educational crisis, as evidenced by these two texts, fundamentally shifts in the early 1980s in conjunction with a global acceptance of neoliberal economic and political practice and the emergence of neoliberal hegemony in the early 1980s.

On September 9, 1984 ABC devoted the evening’s prime time programming to a documentary focused on the crisis of American public education. “To Save Our Schools, To Save Our Children” examines the history of the public school system in the previous decade. At its climax the show’s male narrator informs the viewer that they will take a look at what he calls “The final peril.” The viewer momentarily sits with this question; what is this final peril? Then the headlines scroll across the screen in capital letters; “BY YEAR 2000 ONE IN THREE STUDENTS BLACK OR HISPANIC,” and “53 OF LARGEST CITIES NON-WHITE MAJORITY.” The peril then is not simply the failure of the American public school system but particularly a fear of students of color. The crisis is that American schools must serve non-white children, a population they were never designed to educate. “To Save Our Schools, To Save Our Children” was not the first text of the 1980s to posit a national crisis facing public schools. In fact, this episode aired a year and a half after the publication of “A Nation at Risk,” the Reagan administration’s report on problems the facing American education.

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<sup>539</sup> “Archived”; “To Save Our Schools, to Save Our Children,” *ABC Close-Up!* (ABC, September 4, 1984); Marshall Frady and ABC News, *To Save Our Schools, to Save Our Children: The Approaching Crisis in America’s Public Schools* (Far Hills, N.J: New Horizon Press : Distributed by Scribner’s, 1985).

In order to successfully create and maintain this hegemony, neoliberal practices must permeate several different aspects of society. Just as public schools initially coalesced in response to the need to inculcate skills for the industrial workplace, transformations in the nature of work and the economic practices of the nation necessitated a corresponding transformation in the education of the citizenry. In *Golden Gulag: Prisons, Surplus, Crisis and Opposition in Globalizing California* Gilmore argues that deliberate human response made prisons the practical and political answer to the 1970s capitalist crisis.<sup>540</sup> This same crisis also necessitated a simultaneous and corresponding transformation in the debate around institutionalized education as a result of this neoliberal hegemony articulated by Harvey. Much as the rhetoric of law and order made prisons a politically popular answer to societal woes, a deliberately constructed moment of crisis around educational attainment prompted increased intervention into public schools by both individuals and class hegemony. Understanding the production of this moment of crisis through analysis of “A “Nation at Risk”” and “To Save Our Schools, To Save Our Children” demonstrates how these dual commitments, the commitment to white supremacy underlying the development of the American public school system and another regarding the ascendancy of economic indicators as key metrics of success, authorize a neoliberal response predicated on historical amnesia regarding the systemic inequity of the America public school system.<sup>541</sup>

How “A “Nation at Risk”” generates crisis may indeed seem obvious from its very title but is further reinforced through repetition in the document’s opening phrase. “Our Nation is at risk.” Such phrasing immediately triggers feelings of fear predicated on

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<sup>540</sup> Gilmore, *Golden Gulag*.

<sup>541</sup> “Archived: A “Nation at Risk”,” Evaluative Reports; Policy Guidance, accessed May 11, 2009, <http://www.ed.gov/pubs/NatAtRisk/title.html>.

a threat to the collective nation state. The level of threat amplifies throughout the document, which unequivocally states that, the “educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people.” Much like the “final peril” alluded to in “To Save Our Schools, To Save Our Children,” the audience is asked to grapple with this fear. What is this threatening “rising tide”? After establishing this moment of crisis the report serves to set up the supremacy of individual economic success. Premised on individualism and gainful employment, the report unabashedly links individual economic interests with societal progress, again highlighting economic success as the pinnacle of success. The remainder of the document reiterates this allusion of a foreign specter by highlighting by levels of educational attainment across nation states. Now the report makes it clear that such global competition can no longer be taken lightly. Citing Japanese automobiles, South Korean steel mills and German products, “Nation at Risk” uses the specter of foreign threat to create a sense of urgency about American public schools. Yet while this foreign threat allows for the mobilization of nationalist sentiments, the premise of the report indicates that some measure of this threat is internal.

Educational attainment, clearly established as a national concern, remains articulated in terms of individual achievement. For example, the report reads as follows:

All, regardless of race or class or economic status, are entitled to a fair chance and to the tools for developing their individual powers of mind and spirit to the utmost. This promise means that all children by virtue of their own efforts, competently guided, can hope to attain the mature and informed judgment needed to secure gainful employment, and to manage their own lives, thereby serving not only their own interests but also the progress of society itself.

This first sentence of this quote assumes that race and class (differentiated here from economic status) are not salient factors in an individual’s life trajectory and in no way alter an individual’s ability to get “a fair chance.” This disavowal of race and class serves

as an example of the historical amnesia embedded in this project. Furthermore, the phrase “by virtue of their own efforts” again emphasizes individualism and individual success as sole arbiters of human outcomes again disregarding race and class. Additionally, the history of the public schools focuses on success:

Despite the obstacles and difficulties that inhibit the pursuit of superior educational attainment, we are confident, with history as our guide, that we can meet our goal. The American educational system has responded to previous challenges with remarkable success. In the 19th century our land-grant colleges and universities provided the research and training that developed our Nation's natural resources and the rich agricultural bounty of the American farm. From the late 1800s through mid-20th century, American schools provided the educated workforce needed to seal the success of the Industrial Revolution and to provide the margin of victory in two world wars. In the early part of this century and continuing to this very day, our schools have absorbed vast waves of immigrants and educated them and their children to productive citizenship. Similarly, the Nation's Black colleges have provided opportunity and undergraduate education to the vast majority of college-educated Black Americans.

While this passage implicitly acknowledges black citizens' exclusion from the American education system, the invocation of black colleges belonging to the nation serves to offset the possibility of inequity.

The erasure of racial inequity from American history, a practice that ensures the continuity of white supremacy, continues as another statement in the document establishing the severity of the threat rests on a pastoral, nostalgic reading of the history of American schooling. The report states, “We can take justifiable pride in what our schools and colleges have historically accomplished and contributed to the United States and the well-being of its people.” That schools have not historically served non-white students successfully is not addressed. That schools have continued to penalize students for their mismatch from this somatic norm is unarticulated. That schools are of widely varying quality and tend to disadvantage students of color also remains untouched. This dialogue of race and racelessness obscures the state project of racial violence necessarily



embedded in educational practices that distribute access to educational opportunity unequally.<sup>542</sup>

Just as “Nation at Risk” locates the global crisis of capitalism in individual Americans’ educational shortcomings, “To Save Our Schools, To Save Our Children”, posits the crisis of the American educational system as part of a larger struggle “for the American democratic promise.” This documentary performs different work in that it airs on prime time television. Building off of the discussion articulated in “Nation at Risk” the three parts of the documentary focus on dramatizing the problems facing American education. The first part focuses on students, the second on teachers, and the final on “community faith.” In particular, the final piece uses language that evokes nationalist ideals to situate public schooling within the national imaginary in accordance with this neoliberal context.

This documentary has its own version of American history which, while different from “Nation at Risk,” remains predicated on long term historical amnesia by instead focusing only on the preceding decade. The documentary briefly examines the history of the public school system in the previous decade and does so primarily by looking at a high school in southwest Kansas City as a case study. Here filmmakers summarize their historical lesson from 1970s by stating that desegregation efforts and teacher strikes resulted in “turmoil, uncertainty, fear,” a message further emphasized by the blood splattered photos shown on the screen. This scene provides an initial glimpse into how attempted racial integration serves as the catalyst for declension within the narrative.

Yet depicting this turmoil also sets the stage for a story of redemption in accordance with the narrative’s larger philosophical and political commitments.

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<sup>542</sup> Goldberg, *The Racial State*.

Describing America as a nation of different races and unequal classes, the narrator argues that public school can lead students to achieve their full individual potential. Here again forgetting remains important. While explicitly noting the structural inequality undergirding the American system, the documentary avoids any discussion of the roots of such disparities. Instead, success equates to fulfillment of individual potential as measured by economic success.

Still, race is not absent from this narrative. Ultimately, in a look at the final peril, the program returns to issues of race with those quotes that opened this section: “BY YEAR 2000 ONE IN THREE STUDENTS BLACK OR HISPANIC,” and “53 OF LARGEST CITIES NON-WHITE MAJORITY.” The narrator then punctuates his next statement with deliberate pauses. “Race [pause] class [pause] threatening to break apart our public school system.” The image on the screen depicts silhouettes, racialized as non-white by their hairstyles, dancing to a harsh electronic sound. Noting the failure of desegregation and the corresponding re-segregation of the nation’s schools, the narrator states that such changes are “threatening to institutionalize in our schools the deepening divisions in our society.” Such rhetoric obscures the intimate connection between race and class and the opportunities afforded individuals within American society. Here again is this neoliberal historical amnesia. A commitment to individual economic success necessarily requires a deliberate forgetting of the actual workings of capital.

Such a commitment to individuality leads the narrative to focus in on a particular cohort of stakeholders in Kansas City. Narrating the actions of those actors, the episode highlights those actions associated with transforming school systems to meet contemporary societal needs. Presented in all caps the transformations include: STANDARDIZED TESTS REVIVED, AUTOMATIC PROMOTIONS ELIMINATED, and GRADUATION REQUIREMENTS RAISED. Thus the crisis explicitly authorizes

increased punitive intervention to measure and sort students. Furthermore, the summary of potential positive reforms includes “developing urgently needed partnerships with business leaders,” illustrated by an example of H&R Block funding an advanced calculus class at the high school. Here the crisis particularly supports the intervention of economic elites into the educational practices.

A brief portrayal of several promising individual students applying to college does not stop the documentary from ending on an apocalyptic note. “If America is left with a generation of students unmotivated, disconnected, a generation of mediocrity, it will critically imperil our security, our economic and scientific strength, and the survival of the democratic idea.” Here is the exact same sentiment articulated in “Nation at Risk”. Mediocrity, implicitly linked to students of color, imperils the very survival of our nation. Viewers are asked to “consider the problems enormous . . . if our schools fail, we all fail.” There must be more intervention to ensure that these students are truly up to par. While “To Save Our Schools, To Save Our Children” actually explicitly names the mismatch between students of color and public schools what it prompts as a result is not the possibility of anti-racist school, but simply this feeling or crisis.

Without specific recommendations about how to change public schools to actually serve students of color, this cry joins the sentiments articulated in “Nation at Risk”. As a result, the practices authorized by the manufacture of this moment of crisis around public schooling are predicated on individual economic success and a deliberate historical obfuscation. This discourse echoes those sentiments found in this growing neoliberal hegemony positing economic rationality as supreme rationality, and ultimately paves the way for the fetishization of supposedly objective data to justify increased state intervention in schooling. Such data further reinforces neoliberalism’s historical amnesia by obscuring the historical continuity of American schooling as a national homogenizing

project in which formalized equity through legal and administrative science maintains the racial status quo.

Predicated on the rhetorical ideas of human dignity and individual freedom, neoliberalism unabashedly measures individual success in terms of economic success, privileging economic rationality as supreme rationality. David Harvey's *A Brief History of Neoliberalism* argues that the end of the 1960s marked a different sort of crisis than those mentioned thus far as embedded liberalism faced a crisis of capital accumulation.<sup>543</sup> In response to this crisis, neoliberalism gained both academic and political legitimacy through a variety of factors connected to existing networks of power and privilege. Harvey goes still further arguing that the actuality of neoliberal practices constitutes a political project to reestablish the conditions favorable to capital accumulation and restoration of power to economic elites.

Neoliberalism's definition of economic rationality as supreme rationality also has real consequences for education as a system by positioning students solely as human capital.<sup>544</sup> Emery Hyslop-Margison and Alan Sears argue that neoliberal ideology provides a concrete answer to longstanding philosophic questions about the purpose of education—education for living versus education to earn a living. Neoliberal thought posits human capital preparation as the solution to structural inequality derived from a global economic order serving the few at the expense of the many.<sup>545</sup> “Janet Currie’s four-pronged model outlining the criteria that are most often used by economists and

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<sup>543</sup> David Harvey, *A Brief History of Neoliberalism* (Oxford University Press, USA, 2007).

<sup>544</sup> Michael W Apple, *Educating the “Right” Way: Markets, Standards, God, and Inequality*, 2nd ed (New York: Routledge, 2006).

<sup>545</sup> Emery J Hyslop-Margison, *Neo-Liberalism, Globalization and Human Capital Learning: Reclaiming Education for Democratic Citizenship* (Dordrecht: Springer, 2006).

policymakers in evaluating programs is consistent with the neoliberal agenda to marketize public education. Specifically, these criteria are efficiency, investment, incentive, and equity.”<sup>546</sup> David Goldberg demonstrates the centrality of rhetorics of racelessness to neoliberal conceptual representation.<sup>547</sup>

Scholars such as Ruth Wilson Gilmore, Michelle Alexander, and Robert Perkinson investigate the prison-industrial complex from a variety of different angles and methods.<sup>548</sup> Particularly interrogating the exponential growth of the California prison system post-1980, Ruth Wilson Gilmore situates incarceration as a central feature of the development of the secular state and argues that four state surpluses— finance capital, land, labor, and state capacity—required investment in accordance with capitalism’s systemic need for cycles of accumulation and disaccumulation. Gilmore asserts that deliberate processes made prisons the practical and political answer at this particular moment, and demonstrates how a corresponding redefinition of social notions of crime filled spaces particularly with men of color.<sup>549</sup> Importantly, this new silence on matters of race emerges from a trajectory in which the founding fathers set the groundwork not only for slavery, but ultimately Jim Crow and, as Michelle Alexander argues, the new Jim Crow system represented by our contemporary penal system. Through an in-depth analysis of the creation and production of the war on drugs, Alexander, drawing on her

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<sup>546</sup> Angela Valenzuela, Linda Prieto, and Madlene P. Hamilton, “Introduction to the Special Issue: No Child Left Behind (NCLB) and Minority Youth: What the Qualitative Evidence Suggests,” *Anthropology & Education Quarterly* 38, no. 1 (March 1, 2007): 1–8, doi:10.1525/aeq.2007.38.1.1.

<sup>547</sup> David Theo Goldberg, *The Threat of Race: Reflections on Racial Neoliberalism* (Malden, MA: Wiley-Blackwell, 2009); Goldberg, *The Racial State*; Harvey, *A Brief History of Neoliberalism*.

<sup>548</sup> Gilmore, *Golden Gulag*; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010); Robert Perkinson, *Texas Tough: The Rise of America’s Prison Empire*, 1st ed (New York: Metropolitan Books, 2010).

<sup>549</sup> Gilmore, *Golden Gulag*.

legal background, demonstrates how explicit racialization of policing and punishment in contemporary society serves to disenfranchise African American citizens.<sup>550</sup>

Scholarship like Gilmore and Alexander's comprises only a small part of substantial body of contemporary scholarship that focuses on the relationship between neoliberal ascendancy and the transformation of the state, including but not limited to the creation and exponential growth of the United States prison-industrial complex. Furthermore, Alexander touches on the role of the school-to-prison pipeline in current practices of racialized mass incarceration, but doesn't expand on it or trace its origins. Legal scholars, like Rivkin, offer explanations for the motivations undergirding school exclusion. Rivkin cites racial and ethnic currents, regimentation, politics, and a failure to adopt evidence-based practices as reasons for the school-to-prison pipeline before examining arguments for and against litigation as a remedy, and ultimately calling for a more substantive approach.<sup>551</sup> The recognitions of the limitations of the legal system to remedy existing inequities in the school system, further calls for a more comprehensive analysis of the pipeline's emergence.

## **BUSING'S DEMISE**

In Austin, busing finally began in the fall of 1980 with \$3.4 million in emergency aid from the federal government.<sup>552</sup> That year, under court ordered busing, segregation in

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<sup>550</sup> Alexander, *The New Jim Crow*.

<sup>551</sup> In the argument for, Rivkin cites Jay Philip Heubert, ed., *Law and School Reform: Six Strategies for Promoting Educational Equity* (New Haven [Conn.]: Yale University Press, 1999).

<sup>552</sup> Robert Reinhold, "Texas School Principal, Contradicting Reagan, Says Federal Aid Was Crucial," *New York Times*, May 22, 1983. Interestingly, this same article that cites this statistic references both a Time magazine article about Johnston High School and President Reagan's disavowal of the use of federal funds—he denied that it happened in this instance.

Austin reduced by a third. Further action by the Supreme Court, outlining facilities, staff, faculty, extracurricular activities and transportation as additional areas for measuring compliance with Brown, meant Austin had a lot of work to do. Still, busing had an immediate impact on Austin.

Busing helped minority schools almost immediately. White parents toured the schools to which their children would be bused and demanded improvements, such as ceiling and other repairs at Campbell Elementary, college preparatory course offerings at Johnston High School and bilingual office personnel at Anderson High School. In 1983, the district court declared Austin's schools desegregated and ended its court order. Three years later, the federal government granted Austin unitary status, deciding in effect that the harm done by segregation had been fixed. School trustees stopped busing most elementary students in 1986, triggering an inexorable slide back into segregation.<sup>553</sup>

Following the 1986 Austin school board vote to stop busing, court ordered desegregation ended in 1987.<sup>554</sup> African-American and Latino parents in particular urged advocacy groups and attorneys to let the matter go, arguing that despite the incredible amount of energy and sacrifice, the results failed to get their children a better education. A mere five years post-busing, Austin schools once again reflected the city's residential segregation, resulting in classrooms that were more segregated than the 20 years prior.<sup>555</sup>

Also in the 1980s, the Black Coalition to Maximize Education (BCME), emerged as one of the key groups asking the courts to end busing in Dallas. The majority white school board, in agreement with a plan that amounted to voluntary re-segregation,

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<sup>553</sup> Alford, "A Dream Deferred; The News in 1954 That Black and White Students Would Soon Attend the Same Schools Pulled the Plug on American Segregation. But Brown's Legacy in Austin Has Largely Been One of Missed Opportunities."

<sup>554</sup> Autman, "Parents Worry About 'Resegregation' of Elementary Schools; Austin, Texas, Still Struggles With Integration After Years of Acrimonious; Busing Program."

<sup>555</sup> Tom Teepen, "Slipping Back into Segregation," *Austin American-Statesman (TX)*, April 14, 1997, Final edition.

presented them to Federal District Judge Barefoot Sanders.<sup>556</sup> Judge Sanders' 1981 ruling continued to push the district for supposed desegregation while determining busing was not a "feasible remedy," instead deeming compensatory instructional measures, such as "learning centers", sufficient.<sup>557</sup> The 1981 plan ended busing in grades four through eight.<sup>558</sup> While the learning centers showed little promise, and the district continued to desegregate, the litigation continued.

Despite deepening segregation, in 1993 the Dallas School board voted to ask for an end to the 23-year desegregation lawsuit.<sup>559</sup> Jim Schutze, writing for the *Dallas Observer*, synthesizes some of the impact of tri-partite segregation during the case noting "Mexican-Americans have always been an element in the deseg suit, shunted this way and that, from minority status to white and back, depending on which side needed them."<sup>560</sup> Jim Schutze writes, "In 1994, Sanders ruled that he was ready to release the district from the suit and call an end to the game, provided the district could show a pattern of three years' consistent measurable success in the educational remedies called for in his original order."<sup>561</sup> Despite this clear path to end court order, the next six years

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<sup>556</sup> Schutze, "Segregation Forever; How Dallas Got What It Wanted."

<sup>557</sup> "School Order in Dallas Altered to Limit Busing: 25,000 Bused Now Testimony of Black Witnesses," *New York Times*, August 4, 1981, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/121706741/abstract/9C2F4DD4F9364148PQ/1?accountid=7118>.

<sup>558</sup> Special to The New York Times, "Integration Battle Continues in Dallas: School Board and Black Coalition to Present Plan in Court to End Busing for 13,000 Board President Is Black Current Case Began in 1970 Increase in Minority Teachers," *New York Times*, March 15, 1981, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/121575728/abstract?accountid=7118>.

<sup>559</sup> "Segregation in Schools Widespread, Worsening, National Study Says," *The Dallas Morning News*, December 14, 1993, HOME FINAL edition.

<sup>560</sup> Schutze, "Segregation Forever; How Dallas Got What It Wanted."

<sup>561</sup> Ibid.



set off further turmoil in the Dallas school system. Schutze's journalism describes that period sarcastically as "an incredible six-year episode of total political and administrative entropy—people in berets with shotguns at board meetings, one superintendent off to the pokey for pinching furniture, the next one off the deep end from day one (apparently wanted to swim with his friends)."<sup>562</sup> The 1971 plan neither desegregated the city schools nor ended the litigation. The opposition to busing led to the continued exodus of white students from the DISD system. McCorkle shows the substantive white flight reduced the white student population; by 1983 busing had failed.<sup>563</sup> A 1998 article noted that, "a school district in which eight of 10 students were Anglo when the desegregation battles began has evolved into a district in which minority children are the majority." This demographic shift fundamentally changes the debate over segregation's causes and solutions. At the same time, much of this shift occurred without a substantial change to the Anglo population living within the boundaries of DISD, which constitutes evidence of many white children attending private schools. In 1988, DISD continued to follow the court-mandated desegregation plan from 1982, which itself maintained the essence of the 1976 plan.<sup>564</sup> At the same time, disparities in opportunity and achievement continued.

#### **STATE STANDARDIZED TESTING: ROSS PEROT AND THE SPECIAL SESSION**

The repeal of segregation marks a transition in terms of discipline. Texas public schools growth in the 1970s stressed an already under-financed public school system. In

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<sup>562</sup> Ibid.

<sup>563</sup> McCorkle, *Desegregation and Busing in the Dallas Independent School District*.

<sup>564</sup> Joseph Garcia, "Desegregation In DISD - Debate Rages on after 33 Years of Court Battles," *The Dallas Morning News*, September 18, 1988, HOME FINAL edition.

the early 1980s, a report by the US Secretary of Education ranked Texas 49th in income per capita spending for public schools. The report also found Texas lagging on standardized test scores and the percentage of students graduating from high school.<sup>565</sup>

In 1979 Senate Bill 350 required criterion-referenced tests to assess basic skills in reading, writing, and mathematics for grades three, five, and nine. The tests mandated in this bill were known as the Texas Assessment of Basic Skills (TABS) and were administered from 1980-1984. This moment is a particularly important one to animate with press coverage and notes from the legislative hearings because of the shift this begins to represent. Just as it becomes less legally or socially viable to discriminate based on race and class, these new measures specifying measurement emerge.

The 1984 special session, which started on June 4, 1984, opens with Governor Mark White addressing the joint sessions, invoking the failure of the public schools. White states, “Current conditions make unavoidable the conclusion that we must find better ways of educating our children. The failures of the current system of have been spelled out over and over again.”<sup>566</sup> White continued by describing the signs of these failures particularly in the form of wasted human potential. His description asserts a piece of the same argument many school-to-prison pipeline authors and advocates argue, namely that there is a link between inadequate education in our public schools and societal punishment. He notes:

A single tour through our state’s prisons and the most cursory understanding of why many of our young people are incarcerated there points to one graphic example of where a poor education can lead. The frustration and embarrassment suffered by those who cannot read and write well enough even to fill out a simple

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<sup>565</sup> Campbell, *Gone to Texas*. 453.

<sup>566</sup> “Senate Journal: 68th Legislature, Second Called Session,” June 4, 1984, [http://www.lrl.state.tx.us/scanned/Senatejournals/68/S\\_68\\_2.pdf](http://www.lrl.state.tx.us/scanned/Senatejournals/68/S_68_2.pdf). 14.

job application is another. Crime and unemployment are among the greatest tragedies that result.<sup>567</sup>

The magnitude of this crisis as articulated by White includes the danger that this poses by “endangering the quality of this country’s armed forces.” White invokes the language of crisis seen at the beginning of this chapter, “We all recognize that we face a crisis in American education,” authorizing a substantial intervention into the state system. To that end, White involved Ross Perot in the proceedings.

Ross Perot made his fortune founding Electronic Data Systems (EDS), a data processing company, in Dallas.<sup>568</sup> Perot, at the time the chairman of the state’s select committee on education, shared one particular example that captured local and national media attention to demonstrate the school system’s laxity. Citing the case of one boy who received permission to miss 32 days of school in order to participate in livestock competitions where he showed his prize chicken, Perot appealed for substantive school reform.<sup>569</sup> Howard LaFranchi, writing for *The Christian Science Monitor* in 1985, wrote, “One could argue that the most famous animal in Texas is not the armadillo, not even the Texas longhorn, but the 32-day chicken. “ Christened one of the most comprehensive education bills at the time nationwide public education reform, the bill culminated one of Perot’s pet projects. Texas Governor Mark White said at the time, “It says that Texas is serious about academic success.” Governor White, a Democrat, ensured that the law also increased school budgets and teacher salaries. Perot also argues for listening to teachers and proper teacher compensation.

Taking the floor Perot continues to evoke this rhetoric of crisis:

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<sup>567</sup> Ibid. 14.

<sup>568</sup> Campbell, *Gone to Texas*.

<sup>569</sup> Howard LaFranchi, “Texas Education Overhaul Signals Get-Tough Attitude,” *Christian Science Monitor*, March 25, 1985, <http://www.csmonitor.com/1985/0325/dform1.html>.

We simply cannot take the future for granted. Where does our country rank? As you all know that we rank at the bottom of the industrialized world in terms of the educational achievement of our children. Last place. That's tragic. Where does our great, rich, proud state of Texas rank? Down in the forties among the fifty states. We are at the bottom of the bottom in terms of educational achievement.<sup>570</sup>

Yet Perot goes on to articulate the embarrassment of the Texas textbook controversy and lambastes teacher certification in Texas. He further argues that not just the certification process, but the pool of candidates jeopardizes the quality of teachers in Texas. He notes, “but the people in the schools of education now . . . represents [sic] the lowest twenty-five percent of the SAT scores of the students in college today. In other words, the dumbest folks in college are studying to be teachers and routinely getting teacher certificates today.”<sup>571</sup> Perot argues:

Now, when I was in school, the real challenge was to get the kids out of the cotton fields and get us in class. And the school system was really kind of run around agriculture. Now we've come full circle now. We've institutionalized cheap child labor and we call it distributive education and we're dumping children and particularly minority children and disadvantaged children out of our schools at noon to cook hamburgers and tacos, and sac groceries, and damaging forever their ability to lead, rich, productive, successful lives.<sup>572</sup>

Perot's account of history here blurs the fact as his argument that the historical challenge was to get students out of fields and into the classroom contradicts the evidence presented earlier in this dissertation that demonstrates how white citizens in positions of economic power used a variety of tactics to ensure the continuity of the labor force, from the lack of enforcement of compulsory attendance laws to outright intimidation and violence. In this quote Perot further argues that vocation education trains student for obsolete jobs—“It's a

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<sup>570</sup> “Senate Journal: 68th Legislature, Second Called Session.” 22.

<sup>571</sup> Ibid. 24.

<sup>572</sup> Ibid. 27.

dumping ground for the poor and the disadvantaged and the slow learners.”<sup>573</sup> Here Perot’s comments show that the concern for such students classified outside of the real of normal is about not just the students’ well-being, but the economic health of the whole state and society, demonstrating a point of interest convergence; white businessmen also benefit if schools prepare labor in a way that meets the needs of the market.

While Perot doesn’t necessarily recognize his own privilege as a wealthy white male actor in this situation, Perot is full of catchy quotes and does recognize the racial implications of structural inequity in the public schools. He explains how failing schools perpetuate the intersection between racial and economic segregation:

You take a child from a disadvantaged family, say a black family. The parents never had a chance to go to school. The child goes through the schools; the child graduates with a diploma; the hopes and dreams of the family are wrapped up in that child and then the parents and the child realize that the cruelest form of economic segregation has been played on that child. Because that child never had to learn. Never had to learn.<sup>574</sup>

Perot’s comments here demonstrate a belief that reform is necessary to address racial structural deficits in the existing system. Perot also explicitly addresses racist white attitudes that support inequity among schools, particularly the idea that non-white students are capable of learning. Perot said, “Now, we, unfortunately have an attitude in too many places across public education in Texas that blacks and browns and disadvantaged people cannot learn. Now, as far as I’m concerned, anybody that feels like that, number one, is wrong, and number two, should not even have a job in the new

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<sup>573</sup> Ibid. 27.

<sup>574</sup> Ibid. 27. This page also includes an odd quote that provides a place to see more of Perot’s racial identity: “Now, I was a child when milking machines first came out. Now, that was the second freeing of the slaves. If anybody ever lived around a dairy you know exactly what I mean.” Perot’s equation of labor on a dairy farm prior to milking machines evidences a glib orientation to slavery.

system.”<sup>575</sup> Perot’s condemnation of explicit racism aligns separates from implicit structural racism; the corollary of his argument is that explicit racism can be wrought out if we remove the explicit racists in the system. Still, Perot’s acknowledgment that racist attitudes pervade a still substantive swath of education alludes to the fact that many educators in positions of systemic power hold racist beliefs and that removing them from the system would require deliberate changes in personal.

Perot denouncement of explicitly racist practitioners leads to his insistence that children need to be loved and encouraged. “Now, that brings us to equalization. We’ve got school districts so poor they can’t keep the lights on, and we’ve got school districts so rich they can’t spend the money and we’ve got a court case we’re going to lose with 100% certainty, and you know it, and it know it.”<sup>576</sup> Perot’s reference to a court case here is to the ongoing battle over school financing initiated in *Rodriguez v. San Antonio Independent School District*. Perot’s solution to support equalization is to employ business practices, including increased assessment and accountability, to schools across the state. The Christian Science Monitor quoted Harold Massey, executive director of the Texas Association of Secondary School Principals (TASSP), “Probably the greatest thing about this bill is that it establishes the kind of accountability we’ve had in big business for many years.”<sup>577</sup> The article further notes “Perhaps the best example of the education reform’s business philosophy is the emphasis it places on gauging what—and who—works and responding accordingly.”<sup>578</sup> However this what and who assumes that both a utility and validity to what ultimately legislators decide to measure.

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<sup>575</sup> Ibid., 29.

<sup>576</sup> Ibid., 30.

<sup>577</sup> LaFranchi, “Texas Education Overhaul Signals Get-Tough Attitude.”

<sup>578</sup> Ibid.

A new emphasis on data collection followed this increased focus on measurement, as the Public Education Information Management System (PEIMS) start accumulating data in 1987. In 1985 the Texas Educational Assessment of Minimum Skills (TEAMS) replaced the TABS exams. This new test accompanied a decision that beginning with the class of 1987 students must pass an exit-level TEAMS test in order to receive a high school diploma. The question both of what the tests actually measure and their potential unintended consequences evolves substantially some twenty years after their initial implementation. Yet, in the immediate aftermath of their implementation many including Perot applauded the tests as a step towards equity in schools.

Writing for a national audience in 1988 Perot reflects on his work with the Texas public school system, again laying out his investments in business ideology while providing punchy anecdotes. Perot writes:

When we started studying the situation, we found, as is usually the case in business that the problems began at the top. We had no clearly stated objectives, no philosophy for managing a multibillion-dollar business. We had no accountability for academic achievement; we had no standard cost-accounting system. We didn't know what it cost to teach algebra; we didn't know what it cost to teach shop. Now this is comparable to flying a 747 in the fog, through the mountains, at low altitude, without an instrument panel. Texas was spending \$8 billion a year flying blind.<sup>579</sup>

Perot's assessment a few years later both brings up real shortcomings of the system and clearly articulates the transformation underway—schools are to run like businesses. Perot's article continues illustrating the dismal state of education and the need for accountability and discipline to create change.<sup>580</sup> Perot continues to annunciate his belief

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<sup>579</sup> Ross H. Perot, "Wake Up, America! We're Wasting Our Future: We Should Start by Educating Our Kids for the Next Century Wake Up, America," *The Washington Post (1974-Current File)*, November 20, 1988, sec. Outlook.

<sup>580</sup> Ibid. Arguing for an overhaul of teacher certification, Perot notes that, "In Texas, the lowest 25 percent of students, based on college SAT scores, were in schools of education. You could have a PhD from the

that these reforms evidence positive intentionality, a commitment to equity leading a fight against vast disparities in Texas school funding. He calls it “the bloodiest fight we had.” He then notes:

Almost as hard was facing up to the fact that while Texas has a large and diverse population, our school system was essentially built on the assumption that the only people considered educable in our state were middle-income children whose mothers didn’t work. In fact, we found that only one out of five children in the school system had Mom sitting there at home to do the tutoring that the schools weren’t doing. We were writing off the rest of our young people.<sup>581</sup>

Perot genuinely believes that business reforms sufficiently addressed the historical debilitation of students in public schools. Writing for the *Texas Observer* in 2014, Jason Stanford argues “Since Perot made money in the punch-card business it made sense that standardized, fill-in-the-little-oval-with-a-No.-2-pencil bubble tests offered the best way to measure classroom learning.”<sup>582</sup> However, as analysis of the “Texas Miracle” will show shortly, such positive intentionality remains haunted by the fundamentally lack of assimilability to citizenship for those historical denied full access. For decades to come, Texas educators and legislators tinkered with the tests. In 1990 another new state test debuted. This test, The Texas Assessment of Academic Skills (TAAS) became the barometer for measuring student performance for the following twelve years.

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best schools in our country, but if you didn’t have a teacher’s certificate—which has fewer requirements than getting a barber’s/beautician’s certificate in Texas—you couldn’t teach in a Texas public school.”

<sup>581</sup> Ibid. Perot continues: “Being a melting pot for diverse cultures and heritages has always been one of America’s greatest strengths. We don’t have time to waste fighting one another on the race issue. We should love one another. If we can’t do that we should learn to get along with one another now. The few diehards remaining should recognize that we are stuck with one another.”

<sup>582</sup> Jason Stanford, “A Prof Debunks Standardized Testing & Pearson Strikes Back,” *The Texas Observer*, September 3, 2014, <http://www.texasobserver.org/walter-stroup-standardized-testing-pearson/>.



## IDEA AND SPECIAL EDUCATION REVISED

As assessments gained more traction as an acceptable barometer for all students, disparities in public education persisted and became more entrenched. The Education of the Handicapped Act Amendments of 1990 (P.L. 101-476) changed the title of the Education for All Handicapped Children Act to the Individual with Disabilities Education Act (IDEA).<sup>583</sup> Additionally, “children with disabilities” replaced the phrase “handicapped children.” Amended many times since its initial implementation, this rewrite constitutes one of the most substantial changes to the act. Other notable revisions include the elimination of states’ immunity to litigation.<sup>584</sup> In the same year, Congress also passed the Americans with Disabilities Act of 1990 (P.L. 101-336) legally protecting individuals with disabilities from discrimination.

Still IDEA’s propensity for labeling continues the trajectory of treating special education students, reinscribing the supposed objectivity of the science supporting the categorization.

Disability studies advocate would point to the IDEA as an attempt to solve the social science problem using hard science. The IDEA’s reliance on objective reasoning-based on statistical data to create a prescription (IEP) to cure a disability-is considered an unduly simplistic way to approach all the complexities of a human being interacting with in a multi-faceted social system such as a school.<sup>585</sup>

This seemingly objective approach to special education also emphasizes recourse through the legal system. Elisa Hyman, Dean Hill Rivkin, and Stephen A. Rosenbaum, in “How Idea Fails Families without Means: Causes and Corrections from the Frontlines of

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<sup>583</sup> Donald D. Hammill, “A Brief Look at the Learning Disabilities Movement in the United States,” *Journal of Learning Disabilities* 26, no. 5 (May 1, 1993): 295–310, doi:10.1177/002221949302600502.

<sup>584</sup> Hyman et. all point out that while the legislation was consciously dubbed the Individuals with Disabilities Education Improvement Act or IDEIA, it continues to be popularly known as IDEA.

<sup>585</sup> Strax, Strax, and Cooper, *Kids in the Middle*. 17.

Special Education Lawyering,” emphasize not only the links between race and disability established in this dissertation, they further draw out the links to poverty.<sup>586</sup> “Low-income students with disabilities are more frequently pushed out of public education through punitive discipline, sheer neglect, or other more subtle strategies.” They reiterate, “Low-income students of color with unidentified educational disabilities are disproportionately referred for prosecution in juvenile court.”<sup>587</sup>

Dissimilar to the progress made under the IDEA for their wealthier peers, low-income children are not reaping the educational benefits that effective advocacy has achieved for students with disabilities who can afford determined advocates, skilled counsel, and knowledgeable experts to navigate the highly technical mandates of the statute and corresponding regulations.<sup>588</sup>

Given the centrality of procedural protections at the core of IDEA—state complaints, mediation, and litigation are the mechanisms contained for individuals to challenge the decisions of districts—the lack of access the legal council. Additional amendments in 1997 added disciplinary provisions and accountability for students with disabilities.<sup>589</sup> IDEA’s 2004 reauthorization not only eliminated the requirement of intelligence testing, but also led to some states prohibiting such testing as a learning disability assessment tool.<sup>590</sup> Still, despite the increased emphasis on reducing testing to categorize students, a case study of student referrals demonstrates how subjective referrals impact both students and parents.

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<sup>586</sup> Hyman, Rivkin, and Rosenbaum, “How Idea Fails Families without Means.”

<sup>587</sup> Ibid.

<sup>588</sup> Ibid.

<sup>589</sup> Strax, Strax, and Cooper, *Kids in the Middle*.

<sup>590</sup> Scott Graves and Angela Mitchell, “Is the Moratorium Over? African American Psychology Professionals’ Views on Intelligence Testing in Response to Changes to Federal Policy,” *Journal of Black Psychology* 37, no. 4 (November 1, 2011): 407–25, doi:10.1177/0095798410394177.

Juliet E. Hart et. al. present us with the case study of a boy they refer to as Robert:

Robert was a second grader in a school serving one of the poorest neighborhoods in the city. The student population was predominantly African American, with a growing proportion of Hispanics. Robert's behavior had been troubling in the first grade and, in the second grade, his African American teacher referred him for disturbing behavior. Although Robert's mother signed consent for evaluation in January of his second-grade year, Robert's case did not go forward immediately for evaluation, and the principal placed Robert on half-day attendance, requiring that his mother pick him up from school at 11:00 A.M. every day. This arrangement continued until May, when his mother protested. Upon his return to full day school, Robert's behavior was much deteriorated. He was then evaluated and found to have attention deficit/hyperactivity disorder (ADHD) and to be eligible for services under Other Health Impaired. When his behavior did not improve in a pull-out special education class (his IEP contained no requirements for a behavior plan), the same psychologist then determined that Robert was eligible for services as ED, and he was placed in a self-contained program in another school. Robert's medication compliance was enforced in that program, and his behavior improved through the fifth grade. Upon entering middle school, however, Robert was sent to a separate school for children with ED.<sup>591</sup>

Hart goes on to describe the problematic nature of Robert's referral, especially given his classroom setting, where "there was an almost total reliance on repetitive, unmonitored seat work." Despite having an experienced teacher, upon observation this teacher spent the majority of time "disciplining" the children, "often with harsh, threatening, and even unkind reprimands." Robert was frequently directed to stand at the front of the room where his teacher generally ignored his behavior. Hart further assessed that school administrators placed blame for Robert's behavior on the home context; "Despite her consistent and well-informed participation at all school conferences for Robert, this mother was frequently treated with disrespect by school personnel because they knew that she had a history of drug abuse and was living on public assistance with four of her

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<sup>591</sup> Juliet E. Hart et al., "The Continuum of 'Troubling' to 'Troubled' Behavior Exploratory Case Studies of African American Students in Programs for Emotional Disturbance," *Remedial and Special Education* 31, no. 3 (May 1, 2010): 148–62, doi:10.1177/0741932508327468.

children.”<sup>592</sup> In contrast, researchers visits to Robert’s home found an “affectionate, attentive, and well-organized mother.”

Hart further describes the pressure facing the psychologist charged with labeling Robert for disagreement with school administrators.

Under considerable pressure to remove Robert from the school, the psychologist’s initial evaluation was carefully done, and he explained that his finding of ADHD reflected Robert’s impulsivity and lack of reflection, as contrasted with the negative ideation that would be expected in ED. But this finding produced much dismay, even anger, within the placement team. With neither a behavioral plan nor a plan to ensure Robert’s compliance with medication, his behavior continued to prove challenging, and when an occasion arose where he physically threatened a teacher, the psychologist was called in. He soon reported that he had “updated” Robert’s evaluation and found him eligible for services in a self-contained program for ED in another school.<sup>593</sup>

Hart’s findings further demonstrate the subjectivity involved in ED labeling, particularly in restrictive general education settings. Such conclusions challenge the notion purportedly undergirding special education, that collecting evidence of child deficits supports the provision of services.

Hart writes, “The final concern in analyzing the meaning of ethnic overrepresentation in special education is the efficacy of such placement. As the judge in the *Larry P. v. Riles* (1979) case observed nearly three decades ago, if the programs are “dead ends” for children, then these placements are problematic.” In Robert’s case, “poor instruction, excessive restrictiveness, and/or lack of opportunity to exit” mark his placement as a “dead end.” Hart and other scholars call for intensive study of the referral process and further attention to ensuring school personnel develop the ability “to monitor the impact of their own beliefs and biases on their professional decision making.” Hart

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<sup>592</sup> Ibid. 154-155.

<sup>593</sup> Ibid. 158.

writes that with such steps, “the field may logically acknowledge that skilled and sensitive professional judgment, not a categorical, enumerative concept of science, is at the heart of the evaluation process.”<sup>594</sup>

David Connor and Beth Ferri’s article brings us back to the Lillian Smith quote that opens Chapter 4:

This contemporary reality raises two historical questions: Why did supporters of Brown not recognize how the assigned status of "disability" could serve as a mechanism for re-segregating students of color in otherwise desegregated schools? And, why did special education fail to take into account the intersection of race and disability and, thus undermine the goals of the Brown decision? These questions, which we purposely raise at the fiftieth anniversary of Brown and the thirtieth anniversary of IDEA, suggest that the time is ripe to contemplate how ideologies about race and ability have remained intertwined throughout the history of American public schooling.<sup>595</sup>

Instead the connection between ability and racial categorization and assessment further undergirds contemporary schooling practices, including the proliferation of high-stakes testing.

## **THE 1995 RE-WRITE AND ZERO TOLERANCE**

Despite that status of students of color as most likely to be injured by public schooling, rhetorics positioning them as criminal persist in the 1990s. As discussed in the previous chapters, the disproportionate physical punishment of both students of color and students with disabilities demonstrate the extent to which those students are disproportionately subjected to violence and injury, and again the extent to which students of colors disproportionate labeling as students with disabilities renders them

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<sup>594</sup> Ibid.

<sup>595</sup> David J. Connor and Beth A. Ferri, “Integration and Inclusion: A Troubling Nexus: Race, Disability, and Special Education,” *The Journal of African American History* 90, no. 1/2 (January 1, 2005): 107–27.

doubly debilitated, a trend that remained in the late 1980s. A study based on the biennial data published by the U.S. Department of Education's Office of Civil Rights in 1986, found Texas among the ten states with the biggest black-white disparities in rates of corporal punishment. Other studies in the late eighties and early nineties demonstrated the clear racial disparities in which students were physically punished at school.<sup>596</sup>In 1987 the Boston-based National Coalition of Advocates for Students authored an analysis of public school day demonstrating that "black youngsters are more than twice as likely to be hit or be labeled mentally retarded as whites. And while blacks make up 16 percent of the school population, they comprise only 8 percent of those in gifted programs."<sup>597</sup>Despite evidence that the debilitation of students of color marked them as more likely for disability, warnings regarding juvenile "superpredators" put forth by academics in the 1990s, including John DiIulio, James Fox, and James Wilson, fueled national fears about youth of color. Therese Edmiston writes, "much of this group's work on juvenile superpredators is regarded as 'racist speculation about criminality' employed 'to keep the suburbs afraid of young men of color in the inner cities.'"<sup>598</sup>Such coded rhetoric positions students of color as violent criminals authorized increasingly punitive practices in schools.

Importantly, much of the racially coded language that justified such policies is noticeably less extreme than "superpredator." In one such example, the Heritage Foundation published a report in 1995 that details the "collapse of discipline and civil

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<sup>596</sup> John R. Slate et al., "Corporal Punishment: Used in a Discriminatory Manner?," *The Clearing House* 64, no. 6 (July 1, 1991): 362–64.

<sup>597</sup> Ibid.

<sup>598</sup> Therese Edmiston, "Classroom to Courtroom: How Texas's Unique School-Based Ticketing Practice Turns Students into Criminals, Burdens Courts, and Violates the Eighth Amendment," *Texas Journal on Civil Liberties & Civil Rights* 17, no. 2 (Spring 2012): 181–210.

behavior in schools.” Here again the language evokes an unspecified time when discipline existed. The report reads:

The bad behavior and loss of respect exhibited daily in America's public schools indicate an institution in deep trouble. Problem-plagued school systems and schools with poorly written and poorly enforced policies on behavior typically exhibit an education mission that seems amorphous, allowing an erosion of tradition and sensible expectations over time.<sup>599</sup>

Both phrases “bad behavior” and “loss of respect” allude to unspoken norms of behavior and another unspecified time when respect was given. Quoting former U.S. Secretary of Education William J. Bennett, a Distinguished Fellow at the Heritage foundation, America public education deteriorated because “our schools were systemically, culturally deconstructed.” The thinly coded racialized language here references attempts at desegregation.<sup>600</sup> Yet the Heritage Foundation does not acknowledge the role of race or racism in the functioning of the school system. The report’s discussion of race and racism asserts “Their race or ethnicity is irrelevant.” The report quotes Albert Shanker, the president of the American Federation of Teachers (AFT), in 1995:

The mere fact that there is a disparity between referrals of white and black students does not mean there is discrimination. The question is whether a particular teacher was justified in referring a particular student for discipline, and you can't answer that, by looking at their races. We don't base parking tickets on

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<sup>599</sup> Stephen Wallis, “How State and Local Officials Can Restore Discipline and Civility to America’s Public Schools,” *The Heritage Foundation*, accessed February 4, 2016, <http://www.heritage.org/research/reports/1995/02/bg1018nbsp-how-state-and-local-officials-can>.

<sup>600</sup> One of the other pieces of evidence offered in the Heritage Foundation’s report as evidence of the declining morality of public school students includes a national student of 1,700 middle school students that revealed “a majority of boys considered rape ‘acceptable’ under certain conditions. Astoundingly, many of the girls agreed.” This atypical critique of the immorality of students eschews a larger discussion of the role of rape in American society. Stephen Wallis, “How State and Local Officials Can Restore Discipline and Civility to America’s Public Schools,” February 9, 1995.

the race of the driver, and we can't use it to decide questions of school discipline.<sup>601</sup>

Shanker's comment disavows not only the function of race in disproportionate punishment, but also the idea that bias could play a role in individual referrals. The Heritage Foundation's analysis leads them to name three principles for guiding future action, all of which ignore the long-standing links between race and punishment in American schools:

- Disruptive and violent behavior gets zero tolerance.
- Discipline is even-handed, regardless of race.
- Strong discipline contributes to personal growth and personal freedom.

The report concludes by referencing the racial coded document that opens this chapter, "A Nation at Risk:" "Many today believe that, despite the smattering of successes throughout public schooling, the failure to come to grips with student disruption has made America a nation even more at risk than the original commission proclaimed in 1983."<sup>602</sup> Within this larger climate, national Gun-Free Schools Act of 1994 passed, "which required a one-year expulsion for possession of firearms."<sup>603</sup> Additional zero-tolerance policies proliferated following this act and Texas legislators embarked upon a revision of school discipline codes.

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<sup>601</sup> This quote actually appears in an ad taken out by the AFT to protest that a stringent discipline code in Cincinnati was in jeopardy of being overturned in a court settlement. Shanker writes, "The settlement, which involves a 20-year-old desegregation case, notes the disparate impact of the code on African-American students and seeks to remedy it. Its solution is to keep records of the race and sex of the teachers referring students for disciplinary action and the race and sex of the students." Shanker's analysis of why this is problematic is the quote shared in the body text above.

<sup>602</sup> Wallis, "How State and Local Officials Can Restore Discipline and Civility to America's Public Schools."

<sup>603</sup> Nicholas P.1 Triplett ntriple1@uncc.edu, Ayana1 Allen, and Chance W.1 Lewis, "Zero Tolerance, School Shootings, and the Post-Brown Quest for Equity in Discipline Policy: An Examination of How Urban Minorities Are Punished for White Suburban Violence," *Journal of Negro Education* 83, no. 3 (Summer 2014): 352–70.



1995 marked a significant rewrite of Texas public education laws, as Texas legislators adopted the Texas Education Code Chapter 37 on student discipline, a key source for this chapter.<sup>604</sup> This legislation further increased local control and also granted teachers the right to not only remove disruptive students from class, but to veto their return to class. This moment merits further interrogation because of the power teachers to define student' adherence to norms; give that teachers are primarily white women, paying particular attention to the actors reveals who has rights in this space.<sup>605</sup> Chapter 37 not only solidified zero-tolerance policies in Texas, but also redefined some school misbehavior as Class C misdemeanors, through provisions for ticketing.<sup>606</sup> Finally, Chapter 37 requires each district to adopt a "code of conduct," which can outline additional behaviors requiring discipline.<sup>607</sup> In practice, such codes are often more than 50 pages long. This disciplinary revision further allowed districts to have their own police departments. One reported notes, "Districts can have police departments that can write tickets to students without even witnessing the crime."<sup>608</sup> As many districts began developing their own professional police departments, ticket-writing for school offenses increased. While several states have practices where school police can refer students to

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<sup>604</sup> Dan Frosch, "School Paddling Still Stirs Debate," *The New York Times*, March 29, 2011, sec. Education, <http://www.nytimes.com/2011/03/28/education/30paddle.html?scp=3&sq=texas%20school%20discipline&st=cse>.

<sup>605</sup> Meiners, *Right to Be Hostile*, 2007 demonstrates how disenfranchised students lack a voice in classrooms.

<sup>606</sup> Edmiston, "Classroom to Courtroom."

<sup>607</sup> Fabelo et al., "Breaking School's Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement."

<sup>608</sup> Mike Ward, "School Discipline Policies Criticized at Hearing," *Houston Chronicle*, October 30, 2012, <http://www.houstonchronicle.com/news/houston-texas/houston/article/School-discipline-policies-criticized-at-hearing-3994867.php>.

courts, Texas alone issues in-school tickets requiring students to attend criminal court.<sup>609</sup> Similarly to other school punishments, the discretionary nature of the punishment means that the punishment doesn't always seem to match the offense. One Houston Municipal Judge, David Fraga, describes cases with students who did not follow a teacher's instructions in class or spoke out of turn.<sup>610</sup>

Referrals to juvenile justice also increased as a result of the 1995 re-write. An analysis of students committed to the Texas Youth Commission (TYC), the agency set "to supervise the most violent and chronic juvenile delinquents adjudicated in the state," notes an increase in new admits after 1995.<sup>611</sup> The on-hand population in 1995 did not reflect the demographics of youth in the state, but again featured an over representation of both African-American and Hispanic Students. Hispanic students, constituting 35% of the 10 to 16 age range in Texas in 1995, made up 40% of the TYC population; African American students disproportionate representation was even more substantial, making up 40% of the TYC population despite only being 13% of that 10 to 16 age range. Melanie Markley, writing for *The Houston Chronicle*, attributes the increase in discipline in the Houston area to "incidents once handled by trips to the principal's office, after-school detention or, a generation ago, pops with a paddle."<sup>612</sup> While Markely's analysis ignores the continued dynamics of disproportionate punishment found in each mechanism, it demonstrates how the contemporary school-to-prison pipeline requires new increasingly punitive techniques.

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<sup>609</sup> Edmiston, "Classroom to Courtroom."

<sup>610</sup> Melanie Markley, "Schools Use Courts as Tool for Discipline," *Houston Chronicle*, March 18, 2001, <http://www.chron.com/news/article/Schools-use-courts-as-tool-for-discipline-2002114.php>.

<sup>611</sup> Sharon Birch and Nancy Arrigona, *The Changing Profile of the Texas Youth Commission Population* (Austin, Tex: Criminal Justice Policy Council, 1996).

<sup>612</sup> Markley, "Schools Use Courts as Tool for Discipline."

Ticketing continued to proliferate throughout the state especially in accordance with the increase in schools own professional police departments. While not all districts reported ticketing for the same infractions, other infractions that received tickets across multiple districts included possession of tobacco and being disruptive on the school bus, and one district reported issuing a ticket to a student for using an obscene gesture.<sup>613</sup> *The Texas Tribune* reported “For children in many districts throughout the state, conduct like disrupting class, using profanity, acting up on a school bus, fighting in the hallway and truancy is enough for a class C misdemeanor ticket—an offense that can carry a fine between \$60 and \$500 and remain on a student’s criminal record.”<sup>614</sup> Statistics on ticketing in the Houston area from 1999-2000, which appear in the table below, also show major infraction categories.<sup>615</sup>

<b>School District</b>	<b>Truancy</b>	<b>Fighting</b>	<b>Disrupting Classes</b>	<b>Assault</b>	<b>Using Abusive Language</b>
<i>Houston ISD</i>	810	718	311	400	195
<i>Spring Branch ISD</i>	Unknown	175	242	82	101
<i>Aldine ISD</i>	Unknown	343	93	120	108
<i>Spring ISD</i>	367	87	75	Unknown	29
<i>Cypress-Fairbanks ISD</i>	287	290	608	Unknown	Unknown

Table 1: Classifications for ticketing in Texas school districts, 1999-2000

The *Houston Chronicle* reports “School officials say that ticketing students for misdemeanor crimes sets the tone that inappropriate behavior will not be tolerated at

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<sup>613</sup> Ibid.

<sup>614</sup> Morgan Smith, “More Kids Go to Court for Classroom Misbehavior,” January 9, 2011, <http://www.texastribune.org/2011/01/09/more-kids-go-to-court-for-classroom-misbehavior/>.

<sup>615</sup> Markley, “Schools Use Courts as Tool for Discipline.”

school.”<sup>616</sup> District officials also cited the benefit of the parental involvement required by ticketing, since parents must accompany juveniles to court. However, financially punishing parents has drawback.

One father of an HISD high school student said he did not know his daughter was skipping school until the district filed criminal charges. The man, who asked that his family not be identified, ended up paying \$500 in fines because his daughter had been sneaking away from campus and had missed a month's worth of classes.<sup>617</sup>

Despite school officials' claims that they attempted to contact him, the father never heard of the problem ahead of time. The law's provisions regarding students with disabilities notes that any decisions made by a placement review committee must comply with state and federal laws, which do not preclude ticketing. In a 2001 incident, mother Deborah Dills owed nearly \$600 in fines because of citations issued to her emotionally disturbed son for using profanity in his public school special education class. A spokesperson for the school district, Humble Independent School District, defended the disciplinary method, telling the *Houston Chronicle* “He has to understand that in our society, threatening people and calling them names is wrong.”<sup>618</sup> Section 37.0021 of Chapter 37 further includes details regarding time-out, confinement, seclusion and restraint for students with disabilities.<sup>619</sup>

In 1999, following Columbine, The Texas School Safety Center started as a resource for districts developing and implementing policies and programs for safe

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<sup>616</sup> Ibid.

<sup>617</sup> Ibid.

<sup>618</sup> Ibid.

<sup>619</sup> “Safe Schools Act,” *Texas AFT*, January 9, 2015, <http://www.texasaft.org/safe-schools-act/>.

learning environments.<sup>620</sup> In 2001 Senate Bill 430 established the Texas School Safety Center as a permanent entity.<sup>621</sup> These debates are also foundational because of the way in which No Child Left Behind (NCLB) further impact the language of evaluation and discipline for schools. NCLB focused not only on whether or not schools were making “Adequate Yearly Progress” but also on whether or not they proved “persistently dangerous.” These categories rely on, create, and reinforce racialized notions of criminality and discourses of fear.

Zero-tolerance policies constitute a key contributor of the school-to-prison pipeline. Yet studies in the last twenty years continue to demonstrate how black students receive the disproportionate brunt of such punishment. A 2000 article in the magazine *Rethinking Schools* titled “Zero Tolerance Unfair to Blacks” draws attention to a study conducted by the Applied Research Center (ARC), non-profit educational policy institute, in which black students’ suspension and expulsion rates occurred at a higher rate than their population in the school district, whereas the same disciplinary actions applied to white students less frequently than their population. Examining discipline in ten cities from 1997-1999, including Austin, TX, the report found race to comprise a significant dynamic of school discipline.<sup>622</sup> In the same year Jessie Jackson led 5,000 people in protest against a school’s expulsion of seven African American boys for a fight following a football game.<sup>623</sup>

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<sup>620</sup> “K-12 Services | Texas School Safety Center (TxSSC),” accessed November 1, 2011, <http://www.txssc.txstate.edu/K12/>.

<sup>621</sup> “Texas Legislature Online - 77(R) History for SB 430,” accessed November 1, 2011, <http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=77R&Bill=SB430>.

<sup>622</sup> Joanna Dupuis, “Zero Tolerance Unfair to Blacks,” *Rethinking Schools*, Spring 2000, [http://www.rethinkingschools.org.ezproxy.lib.utexas.edu/archive/14\\_03/arc143.shtml](http://www.rethinkingschools.org.ezproxy.lib.utexas.edu/archive/14_03/arc143.shtml).

<sup>623</sup> “First-Class Jails, Second-Class Schools: An Interview with Jesse Jackson,” *Rethinking Schools*, Summer 2000, [http://www.rethinkingschools.org.ezproxy.lib.utexas.edu/archive/14\\_03/jess143.shtml](http://www.rethinkingschools.org.ezproxy.lib.utexas.edu/archive/14_03/jess143.shtml).

Exclusionary discipline continues to prove harmful to students' life outcomes. The Council of State Governments 2011 study of Texas schools found "Only 40 percent of students disciplined 11 times or more graduated from high school during the study period, and 31 percent of students disciplined one or more times repeated their grade at least once."<sup>624</sup> The presence of cops in the classroom expanded exponentially in the last couple decades. In 1989, seven Texas school districts had their own police departments. In 2011, 178 districts fielded police departments.<sup>625</sup> Students committing minor offenses are more likely to be referred to law enforcement in schools with police officers. Additionally, despite a stated emphasis on rehabilitation, the TYC routinely falls short of that supposed goal and students are often quickly acquainted with the adult justice system.

In 1995 almost half (47%) of the population under TYC supervision were adults in the eyes of the criminal justice system; 70% of juveniles were paroled as adults. Of those discharged in 1995, 91% were discharged as adults . . . The record so far shows that 41% of juveniles paroled from TYC primary care will be reincarcerated within three years of being paroled.<sup>626</sup>

The 1995 rewrite defines corporal punishment as “deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means for punishment,” the Chapter 37 further notes that it does not include “confinement, restraint, seclusion, and time-out,” which state law addresses separately. The re-write does not prohibit corporal punishment, allowing corporal punishment under the following

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<sup>624</sup> Alan Schwarz, “Texas Study Raises Questions About Impact of School Discipline,” *The New York Times*, July 19, 2011, sec. Education, [http://www.nytimes.com/2011/07/19/education/19discipline.html?\\_r=1&scp=1&sq=texas%20school%20discipline&st=cse](http://www.nytimes.com/2011/07/19/education/19discipline.html?_r=1&scp=1&sq=texas%20school%20discipline&st=cse).

<sup>625</sup> Michels Patrick, “State of Texas: Cops in the Classroom,” *The Texas Observer*, February 2, 2016, <http://www.texasobserver.org/state-of-texas-cops-in-the-classroom/>.

<sup>626</sup> Birch and Arrigona, *The Changing Profile of the Texas Youth Commission Population*.

circumstances, a clear reference to Representative Alma Allen's successful though compromised legislation:

If permitted by the board of trustees of a school district, a district educator may use corporal punishment to discipline a student. The exception to this rule is when a parents or guardians with custody or control of a child have previously provided a written, signed statement forbidding the use of corporal punishment to discipline the child.

Authorized disciplinary practices include removing of a student from a classroom, the campus, a school bus, or disciplinary alternative education program, as well as transferring a student to a disciplinary alternative education program, suspension, expulsion, and placement in a juvenile justice alternative education program, time-out, and restraints.

HISD banned corporal punishment in 2001 as a result of school board vote. The *Houston Chronicle* notes that even prior to the ban, incidences of the practices in HISD had greatly diminished as the result of a waiver system that required campus administrators to seek district permission and have parental permission before striking a child. In the 1997-98 school year, nine campuses had waivers, but by the time the ban started in 2001 none remained.<sup>627</sup> Neighboring districts, including Fort Bend and Katy, had both abolished corporal punishment before HISD. Today 32 states have outlawed the practice with New Mexico doing so most recently in 2011. The states that continue the practice are primarily in the south and mid-west. Even within those states, though corporal punishment remains only in particular school districts, disparities in punishment across lines of race and ability exist nationwide.<sup>628</sup> While the segregation and special

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<sup>627</sup> Claudia Feldman, "New HISD Policy Puts Paddling in Past," *Houston Chronicle*, August 18, 2001, <http://www.chron.com/news/houston-texas/article/New-HISD-policy-puts-paddling-in-past-2045093.php>.

<sup>628</sup> Russell J. Skiba et al., "The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment," *The Urban Review* 34, no. 4 (December 1, 2002): 317-42, doi:10.1023/A:1021320817372; Rivkin, "Legal Advocacy and Educational Reform Litigating School

education each allow for the classification and separation of non-normative students, discipline serves both as a corrective and contributor to these categories. Researchers for *A Violent Education* chose to focus on Texas because the state corporally punishes the largest absolute number of students each year.<sup>629</sup> Drawing from in person interviews in February 2008, the report uses pseudonyms to share the stories of students beaten in the Texas public schools. Many more stories like Cedric's emerge, as the report highlights the purposefully humiliating and degrading practices.

Corporal punishment in US public schools usually takes the form of a student hit on the buttocks and upper thighs with a wooden paddle. David F., an eighth grader in Texas, was beaten in seventh grade against his mother's expressed wishes. It happened when David and another student were sent by their teacher to the principal's office for shooting rubber bands at each other. Though school policy required an adult witness in addition to the paddler, David said:

[The Principal] did it on his own. When I went in we didn't talk. He just yelled, "What the heck were you doing that for?" and then he said "I get two swats." So I had to bend over and put my arms on the hands of the chair ... it probably hurt for at least another school period.<sup>630</sup>

The report details how deliberate choices made during the beatings, including positioning of the child and instruments used, aim to maximize pain and humiliation. The report continues:

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Exclusion"; "Education On Lockdown: The Schoolhouse To Jailhouse Track," accessed July 28, 2014, <http://www.advancementproject.org/resources/entry/education-on-lockdown-the-schoolhouse-to-jailhouse-track>.

<sup>629</sup> From "A Violent Education"'s methodological note: "For this report, researchers from Human Rights Watch and the American Civil Liberties Union (ACLU) conducted 181 in-person and telephone interviews with experts and individuals directly affected by corporal punishment, including parents, students, teachers, and administrators. Seventy-one interviewees were current students, recent high school graduates, or young people who left school without obtaining a diploma. Of the current and former students we interviewed, 34 were between the ages of 9 and 17, and 37 were between 18 and 26. All of these young people were interviewed in person in Mississippi or Texas, where corporal punishment is widely used."

<sup>630</sup> "A Violent Education."



This, combined with the fact that blows are administered by mostly male school officials who are supposed to set an example, lead to an atmosphere of humiliation, violence, and degradation. This atmosphere, in some cases tinged with sexual undertones—as when teenage girls are paddled by men—is not conducive to creating a learning environment characterized by safety and mutual respect.<sup>631</sup>

Where corporal punishment does remain, inconsistency in administration makes it particularly ineffective for regulating behavior.

Corporal punishment is sometimes administered arbitrarily, with inconsistent rules, underscoring the inefficacy of the punishment . . . A former student from Texas agreed, “Whether you get in trouble, whether you get paddled, it depends on the teachers.” A teacher noted that she thought it was “least effective because it was a catch-all punishment.” In these situations, students are not given adequate notice or clear rules that would indicate when they will be punished.

Such inconsistency in who gets punished for what highlights its subjective and relational nature. Here again teachers and administrators have the space to punish bodies that deviate from each an explicit norm, such as a printed school rule, or implicit norm, such as “disrespect” or unarticulated deviance from the somatic norm. Here statistics help elucidate those norms, as more frequently punished characteristics relate to conceptions of deviance.

Boys are subjected to corporal punishment more than girls: nationwide, boys make up 78.3 percent of those paddled.<sup>184</sup> African-American students are paddled at more than twice the rate than might be expected given their percentage of the student population: African Americans constitute 17.1 percent of the nationwide student population, but 35.6 percent of those paddled.<sup>185</sup> Though girls as a group are paddled less than boys, African-American girls are more than twice as likely to be subjected to paddling as their white counterparts.<sup>632</sup>

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<sup>631</sup> Ibid., 14.

<sup>632</sup> Ibid., 44.

Here African American students, particularly boys, disproportionate punishment highlights a place for further inquiry. While correlation does not imply causation, examining the historical antecedents of this relationship yields key insights.

A 1992 Congressional Hearing tackled corporal punishment. The findings presented include that corporal punishment decreases learning, arouses aggression in recipients, teaches children to use violence to solve problems, and that “mild to severe corporal punishment can result in a long lasting post traumatic stress disorder (PTSD).”<sup>633</sup> The research summary also notes that students who witness or hear someone else subjected to corporal punishment can also develop emotional stress, including a fear of school.

The influence of Ingraham on judicial rulings at the state and local level is well illustrated in a Texas case in which the Supreme Court allowed a Fifth Circuit ruling to stand (*Cunningham v. Beavers*, 858, F. 2nd 269 (5th Circuit)). This ruling supports Texas regulations that allow corporal punishment of school children up to the point of “deadly force.”<sup>634</sup>

One testimony at the hearing came from Jimmy Dunne, President of the People Opposed to Paddling of Students, from Houston, Texas. Dunne founded the organization in 1981 in an effort to rid Houston schools of corporal punishment.<sup>635</sup> His submitted exhibits include a small cartoon drawn by Brittany Schmidt, a six-year old kindergarten student. The accompanying texts notes when asked about the picture Brittany answered, “it is a kid at school getting a paddling. He was so scared his hair stood up.” Prompted to

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<sup>633</sup> *Hearing on Corporal Punishment: Hearing before the Subcommittee on Select Education of the Committee on Education and Labor, House of Representatives, One Hundred Second Congress, Second Session, Hearing Held in Washington, DC, June 18, 1992.* (Washington :, 1992), <http://hdl.handle.net/2027/pst.000021072345>.

<sup>634</sup> Ibid.

<sup>635</sup> Feldman, “New HISD Policy Puts Paddling in Past.”

explain why the boy was scared, Brittany said, “The teacher was spanking him in the closet.”<sup>636</sup> Jimmy’s testimony shares numerous additional anecdotes regarding students punished in Texas.<sup>637</sup>

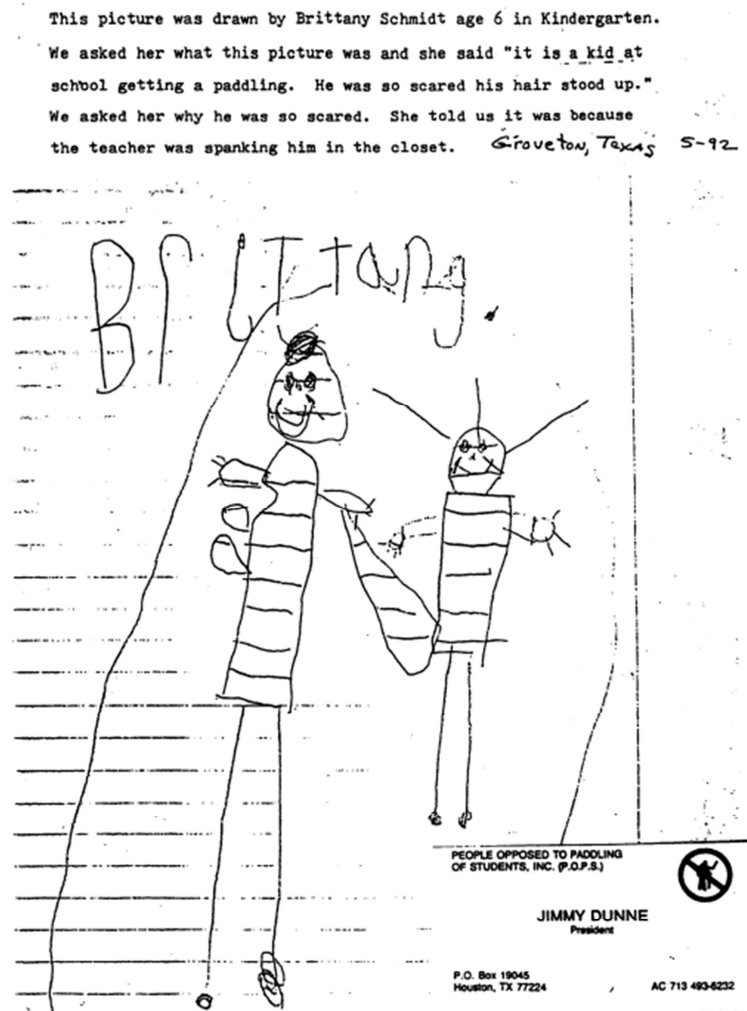


Figure 11: Student’s drawing depicting corporal punishment

<sup>636</sup> *Hearing on Corporal Punishment.*

<sup>637</sup> Speaking to *The Houston Chronicle* several years after his testimony Dunne described paddling as child abuse and noted, “When I was teaching, I saw some people get sadistic pleasure from it.” Feldman, “New HISD Policy Puts Paddling in Past.”

Other organizations opposing corporal punishment at the time of the hearing include, in addition to the NEA, the ACLU, the Society of Adolescent Medicine, the American Academy of Pediatrics, the National Committee for the Prevention of Child Abuse, the American Public Health Association, and the American Psychological Association. Among the other groups opposing corporal punishment, the American Medical Association (AMA) also included a statement at the time of testimony, noting not only the physical but also the psychological effects of corporal punishment. Such effects include loss of self esteem and impaired ego functioning, increased fear and anxiety, feelings of humiliation and helplessness, self destruction and aggressive behavior, stifled relationships with others, and a limited attention span at school impairing academic achievement.<sup>638</sup>

The Fifth Circuit court heard the case of *Fee v. Herndon* in 1990. In this case, Tracy Fee, a sixth-grade special education student, became disruptive during instruction, leading the school's principal to paddle her three times. The court not only determined that "reasonable corporal punishment is not at odds with the [F]ourteenth [A]mendment," but also the "states have provided all the process constitutionally due."<sup>639</sup> In 2000, the Fifth Circuit court again refused to recognize a claim under due process in *Moore v. Willis Independent School District*. Despite physical punishment, strenuous physical activity, that led to the students diagnosis with a degenerative disease and subsequent three-week hospitalization, "the court rejected Moore's complaint based on its conclusion that an adequate state remedy existed for the instructor's conduct."<sup>640</sup> Of the many cases

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<sup>638</sup> *Hearing on Corporal Punishment*.

<sup>639</sup> Wasserman, "Corporal Punishment in K-12 Public School Settings."

<sup>640</sup> *Ibid*.

brought to circuit courts regarding corporal punishment, none of succeeded in discerning a federal constitutional cause for limiting corporal punishment in schools.<sup>641</sup>

# PADDLING IS CHILD ABUSE! BAN IT FROM OUR SCHOOLS



## The Brutal Reality.

The American Medical Association says, "The infliction of pain or discomfort, however minor is not a desirable method of communicating with children. Corporal punishment is in opposition to the AMA's declared intent to attack the widespread problem of child abuse. It has the potential for serious injury."

The National Parent Teachers Association says, "We urge school districts to develop disciplinary procedures which will result in positive behavior of students and to utilize techniques which are not based on physical abuse."

The American Bar Association says, "Corporal punishment of children should be considered a form of child abuse that is contrary to current

knowledge of human behavior and sound education practices."

The bottom line is that we should not be hitting children. Corporal punishment promotes child abuse by sending a message that it is OK to hit children.

It hurts the schools because it destroys self-esteem and turns children off from education which increases the dropout rate and lowers the test scores. When teachers hit, they are teaching children to hit which increases school violence.

School without paddles are more peaceful because they give the students more respect and the students return that respect to the teachers.



If you would like to get involved, contact us:

**People Opposed to Paddling of Students, Inc.  
or P.O.P.S.**

P.O. Box 19045  
Houston, Texas 77224

Phone (713) 493-6232

Jimmy Dunne, Executive Director

A Non-Profit Organization. Donations are Tax Deductible.

Figure 12: Flyer from the Texas-based People Opposed to Paddling of Students, Inc.

<sup>641</sup> In one Eleventh Circuit case, *Neal v. Fulton County Board of Education*, the court ruled that choking a student until he lost his breath and sustained bruises on his neck, was not excessive because "the extent of the student's bodily injury was not serious." In the footnotes of *Lewis M. Wasserman, "Corporal Punishment in K-12 Public School Settings: Reconsideration of Its Constitutional Dimensions Thirty Years after Ingraham v. Wright," Touro Law Review* 26 (2011 2010): 1102..

Such disciplinary concerns garnered attention again in 1992. On June 11, *The Houston Chronicle* ran an article by Melanie Markley, “HISD discipline hardest on middle school blacks.” The article notes that “Black children in Houston schools bear the brunt of disciplinary actions, a new study shows, and most suspensions and expulsions occur in the middle schools.” Superintendent Frank Petruzielo requested the study after realizing that the district did not gather this particular information. The student demonstrated that while black students made up just fewer than 38 percent of the district’s enrollment, they accounted for 50 percent of all disciplinary actions. The article also notes “Trustees voted two years ago to ban corporal punishment district wide, but individual schools can seek waivers on the policy. The five schools that reported paddling last year are Codwell, Anson Jones, Mading, Sunny Side and Wesley elementary schools.”

### TESTING TRANSFORMATION

In a 2000 article for *Rethinking Schools* Linda McNeil tells a condescended version of an anecdote from her book *Contradictions of School Reform: The Educational Costs of Standardized Testing* which examines the impact of high-stakes testing on classroom instruction.<sup>642</sup> Telling the story of a highly qualified teacher, focused on teaching history and literature on the importance of Latino culture for students at a Latino high school, interrupted with text prep books from a consulting company “Guerrilla TAAS.” Mandated to spend more than three months teaching single-page reading

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<sup>642</sup> Linda M McNeil, *Contradictions of School Reform: Educational Costs of Standardized Testing*, Critical Social Thought (New York: Routledge, 2000); Linda McNeil, “The Educational Costs of Standardization,” *Rethinking Schools*, Summer 2000, [http://www.rethinkingschools.org.ezproxy.lib.utexas.edu/archive/14\\_04/tex144.shtml](http://www.rethinkingschools.org.ezproxy.lib.utexas.edu/archive/14_04/tex144.shtml).

activities followed by multiple-choice questions, the test-prep trumped the intellectual analysis and curricular work formerly happening in the classroom. McNeil notes that the imposition of prescribed materials “proscribed the capacity of the teacher to resist.”<sup>643</sup> Teachers who do not support the standardized testing regime are positioned as against students’ achievement, despite the problems with using standardized testing as a proxy for learning. McNeil summarizes:

The test scores generated by centralized, standardized tests like the TAAS, and by the test-prep materials which prepare them for those tests, are not reliable indicators of learning. It is here where the effects on low-performing students, particularly minority students, begin to skew the possibilities for their access to a richer education.<sup>644</sup>

By limiting the scope and rigor of the curriculum, tests like TAAS deeply disadvantage and disenfranchise students. McNeil goes on to detail the impact of the TASS on reading, writing, and math: intellectual subtraction. Other subjects instructional time morphs into test prep for these tested subjects. The singularity of the assessment and the lack of deep understanding about the meaning of the number

In 1997, new curriculum standards called the Texas Essential Knowledge and Skills (TEKS) replaced the Essential Elements Curriculum, created in 1981 by House Bill 246. In 1999 the Texas Legislature enacted House Bill 4, which established the Student Success Initiative, a program which ultimately would require students to pass state tests at certain grade levels in order to be prompted to the next great. In 2001, lawmakers further toughened these requirements beginning with the 2002-2003 and approved new assessments aligned with the new curriculum, TEKS. These tests, that Texas Assessment of Knowledge and Skills (TAKS), were administered in grades 3-11. Of 22 categories

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<sup>643</sup> McNeil, “The Educational Costs of Standardization.”

<sup>644</sup> Ibid.

used for labeling “at-risk” students, the combination of being over age and failing the Texas Assessment of Minimum Academic Skills, the state exit examination, accounted for the highest percentage of dropouts. The number of overage students earning Fs and falling off-pace for graduation has increased in each of the 4 years, as has the number of dropouts.<sup>645</sup>

Several scholars demonstrate the how Texas’ individualized student tracking system allows for creative exclusions of students and overstates the graduation rates in Texas in the last twenty years.<sup>646</sup> Believing in the myth of the Texas miracle requires a particularly ahistorical lens.<sup>647</sup> In their 2001 critique, Valencia et al. argue:

The Texas accountability system – with TAAS as its centerpiece - is a case in point. In our view, Texas' system is inherently flawed. It is atop-down, remote-control system that works against parents, children, and teachers. The system favors policy makers, the Texas Education Agency, and school administrators. Most important, the driver of Texas' accountability system, TAAS, is high-stakes testing at its worst. African American and Mexican American students, in particular, are being adversely affected, as shown by increased drop out and retention rates, less challenging curricula, and pernicious labeling effects that have their source in "public report cards" of school ratings.<sup>648</sup>

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<sup>645</sup> Linda Frazer, “At-Risk Students and Dropouts: Trends across Four Years [1990-91]. Executive Summary.” (Austin Independent School District; Office of Research and Evaluation, 1111 West 6th Street, Austin, TX 78703., 1991), <http://search.proquest.com.ezproxy.lib.utexas.edu/hnpaustinamericanstatesman/docview/62945765/1056262DDB134225PQ/100?accountid=7118>.

<sup>646</sup> Julian Vasquez Heilig and Linda Darling-Hammond, “Accountability Texas-Style: The Progress and Learning of Urban Minority Students in a High-Stakes Testing Context,” *Educational Evaluation and Policy Analysis* 30, no. 2 (June 1, 2008): 75–110; Gary Orfield, ed., *Dropouts in America: Confronting the Graduation Rate Crisis* (Cambridge, Mass: Harvard Education Press, 2004); Haney, “The Myth of the Texas Miracle in Education”; McNeil, *Contradictions of School Reform*.

<sup>647</sup> The authors in Richard R. Valencia et al., “Let’s Treat the Cause, Not the Symptoms: Equity and Accountability in Texas Revisited,” *The Phi Delta Kappan* 83, no. 4 (2001): 318–26, make this argument particularly about 2000’s *GI Forum et al. v. Texas Education Agency et al.* The authors note that the ahistorical evidence allowed for logic that exit examinations linked to graduation made sense.

<sup>648</sup> Richard R. Valencia et al., “Let’s Treat the Cause, Not the Symptoms: Equity and Accountability in Texas Revisited,” *The Phi Delta Kappan* 83, no. 4 (2001): 318–26.



This fifteen-year old critique continues to echo those today. Writing about the Texas landscape today, Cuban writes “the application of business-crafted solutions to public schools has become so thoroughly embedded in policymakers’ thinking about improving schools that these policies are taken for granted and often seen as common sense.”<sup>649</sup>

Passed with bipartisan consensus in 2001, the No Child Left Behind Act (NCLB) officially brought Texas’ testing practices to the rest of the nation. One journalist remarked, “As president, Bush applied the Texas template to the rest of the country.”<sup>650</sup> NCLB declared that all students would reach “high standards” as measured through expanded testing; the law required every public school across the country to annually test students in math and reading from grades three to eight and then further testing for high school. These debates are also foundational because of the way in which No Child Left Behind (NCLB) further impact the language of evaluation and discipline for schools. NCLB focused not only on whether or not schools were making “Adequate Yearly Progress” but also on whether or not they proved “persistently dangerous.” These categories rely on notions criminality and discourses of fear that are heavily racialized.

NCLB marks an unprecedented moment in federal intervention in public schools. While moments like the Supreme Court’s ruling in *Brown v. Board* carried no apparatus for enforcement leading the litigation and supposed reform in its wake to span decades, NCLB included harsh sanction from the beginning. From act’s passage until 2009, states using testing results more than doubled, going from 14 to 32, with those sanctions

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<sup>649</sup> Larry Cuban, *The Blackboard and the Bottom Line: Why Schools Can’t Be Businesses* (Cambridge, Mass: Harvard University Press, 2004). 23.

<sup>650</sup> Mark Schone and NBC News investigative editor, “Enough! Facing Backlash from Parents, Texas Cuts Back on Student Testing,” *NBC News*, accessed December 29, 2014, [http://investigations.nbcnews.com/\\_news/2013/05/27/18534023-enough-facing-backlash-from-parents-texas-cuts-back-on-student-testing](http://investigations.nbcnews.com/_news/2013/05/27/18534023-enough-facing-backlash-from-parents-texas-cuts-back-on-student-testing).

becoming increasingly severe. Sanctions leveled at schools included turning them over to private management, threatened conversion to charter schools, and threats of “reconstitution,” which frequently entailed firing everyone on staff.<sup>651</sup> Such harsh sanctions impact educators and students alike.<sup>652</sup> Additionally, reports such as the Advancement Project’s demonstrate the NCLB’s impact on the learning environment made school less effective, leading to both a decline in graduation rates and slower rates of academic achievement.<sup>653</sup> The report further outlines the direct impact of NCLB on the school-to-prison pipeline. The next and final chapter examines the contemporary school-to-prison pipeline and structural debility resultant from their historical antecedents.

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<sup>651</sup> “Test, Punish and Push Out: How Zero Tolerance and High-Stakes Testing Funnel Youth Into The School,” accessed January 18, 2015, <http://www.advancementproject.org/resources/entry/test-punish-and-push-out-how-zero-tolerance-and-high-stakes-testing-funnel>.

<sup>652</sup> Among the many implications of NCLB, scholars have Julian Vasquez Heilig, Heather Cole, and Angelica Aguilar examine the demise of public arts education. Julian Vasquez Heilig, Heather Cole, and Angélica Aguilar, “From Dewey to No Child Left Behind: The Evolution and Devolution of Public Arts Education,” *Arts Education Policy Review* 111, no. 4 (July 16, 2010): 136–45, doi:10.1080/10632913.2010.490776.

<sup>653</sup> The Advancement Project, “No Child Left Behind Catalyzes ‘School-To-Prison Pipeline,’” March 17, 2011, <http://www.advancementproject.org/news/entry/press-release-no-child-left-behind-catalyzes-school-to-prison-pipeline>.

## Chapter 6: Debilitation and the School to Prison Pipeline, 2002-Present

Debilitation fundamentally structures public schooling today. While earlier chapters demonstrate how shifting notions of race and disability allow for the deployment of disability as a racialized practice, this chapter focuses on the twenty-first century and the current state of schools. This chapter both examines the experience students impacted by this structural state of debility, the school-to-prison pipeline, by synthesizing both stories of individual students and research demonstrating the extent of debilitation. The impact on students varies from explicit physical harm wrought by punishment to the more implicit harm brought about by education that precludes full participation in the citizenry.

In a classroom in Gateway Middle School in Killen, Texas, this past January, Tishica Fisher suffered an asthma attack.<sup>654</sup> The teacher emailed the school nurse and ordered students to remain in their seats. When Fisher fell out of her chair a few minutes later, 15-year-old Anthony Ruelas defied the teacher's order and carried the girl to the nurse's office. By the time he got outside the classroom, Fisher went limp and Ruelas worried he had not done enough to save his friend from dying. School officials, who refused to provide information about Fisher's condition, wrote up Ruelas minutes later. His mother, Mandy Cortes, recounts that the school called to inform her that Ruelas had been suspended for walking out of class.<sup>655</sup> *The Washington Post* describes Cortes as

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<sup>654</sup> Peter Holley, "The 'infuriating' Saga of the Texas Teen Suspended after Rescuing a Classmate," *The Washington Post*, January 27, 2016, <https://www.washingtonpost.com/news/morning-mix/wp/2016/01/27/the-infuriating-saga-of-the-eighth-grader-suspended-after-rescuing-an-asthmatic-classmate/>; H. Drew Blackburn, "The Problem With Zero-Tolerance Policies," *Texas Monthly*, January 29, 2016, <http://www.texasmonthly.com/the-daily-post/zero-tolerance-policies-asthma-attack/>.

<sup>655</sup> Holley, "The 'infuriating' Saga of the Texas Teen Suspended after Rescuing a Classmate."

“distraught and downright furious.” The incident caused both Cortez and her son to lose faith in school officials as they struggled to comprehend how an eighth grader could be punished for having possibly saved someone’s life.<sup>656</sup> Fisher’s family still struggles to comprehend both how school officials could punish Ruelas and why their daughter was left to suffer.<sup>657</sup> Ruelas suffered further distress for the response to his actions, feeling that he had already been labeled a troublemaker through his prior placement in an alternative school. School officials harsh punishment of Ruelas again demonstrate his vulnerability within the system—his identity makes his actions suspect to his teacher before anything ever occurs.

In the last few years increasing media coverage of both the scholarship on the school-to-prison pipeline and students’ lived experience calls attention to the phenomenon of teachers and school administrators administration of excessive student discipline to students of color.<sup>658</sup> The anecdotes go on and on and yet still represent a small number of students impacted by this pipeline.<sup>659</sup> In 2007 police arrested Shaquanda

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<sup>656</sup> The incident prompted Cortes to start home-schooling her son, a decision reinforced by school officials denying that he had been “disciplined for providing aid to another student” while Ruelas was at home serving a two-day suspension.

<sup>657</sup> Holley, “The ‘infuriating’ Saga of the Texas Teen Suspended after Rescuing a Classmate.”

<sup>658</sup> While there is a clear link here to the growing movement against police brutality and links to the Black Lives Matters movement, school and classroom violence often remain removed from the discussion.

<sup>659</sup> Bob Herbert, “School To Prison Pipeline,” *New York Times*, June 9, 2007, <http://search.proquest.com.ezproxy.lib.utexas.edu/docview/848057164/abstract/4B26301451644723PQ/1?accountid=7118>; Bush, *Who Gets a Childhood?*; Terri Langford, “After Racial Outrage, Black Teen Inmate to Be Freed,” *Houston Chronicle*, March 31, 2007, <http://www.chron.com/news/houston-texas/article/After-racial-outrage-black-teen-inmate-to-be-1823805.php>; Sylvia Moreno, “Texas Teen’s Imprisonment Sparks Protests,” *The Washington Post*, March 29, 2007, sec. Nation, <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/28/AR2007032802196.html>. Herbert’s article goes on to both note that the same judge had, just a few months earlier, sentenced a white girl of the same age convicted of burning down her family’s home to mere probation. For another glimpse into the extent of these cases, the no-longer active, Texas Zero Tolerance organization has a page on their website devoted to publishing reported cases of “alleged abuse of disciplinary codes by individual Texas public school districts,” located at “Reported Cases of Alleged Disciplinary Policy Abuse in Individual Texas

Cotton, a 14-year old black high school freshman in Paris, Texas, for shoving a hall monitor. She was convicted for “assault on a public servant” and was sentenced to a prison term of up to seven years. In 2012, an honors student in Houston, Texas “spent the night in jail because she missed class because she had to go to work to support her family.”<sup>660</sup> An 11-year old special education student threw a packet of papers at her teacher, and the incident resulted in her arrest.<sup>661</sup> A 12-year-old Boy Scout who accidentally left his scouting pocketknife in his jacket faced expulsion, arrest, and assignment to an alternative school.<sup>662</sup> In another recent incident, police arrested eight and suspended 20 high school students in South San Antonio ISD following food fights in the cafeteria.<sup>663</sup> An African American kindergartner received a five-day suspension for

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Independent School Districts,” Texas Zero Tolerance, n.d.,  
<http://www.texaszerotolerance.com/reportedcases/reportedcasesmain.html>.

<sup>660</sup> United States, *Ending the School-to-Prison Pipeline: Hearing before the Subcommittee on Constitution, Civil Rights and Human Rights of the Committee on the Judiciary, United States Senate, One Hundred Twelfth Congress, Second Session, December 12, 2012*, S. Hrg 112-848 (Washington: U.S. Government Printing Office, 2012).

<sup>661</sup> From Texas’ Appleseed’s testimony for the Congressional hearing, Ibid.

<sup>662</sup> Ibid. 739. From the Texas Public Policy’s brief. This anecdote evokes one from my time teaching in a middle school classroom in Memphis, Tennessee. One day our school’s police officer entered my classroom to remove two of my students, both African American sixth grade boys, for buying and selling weapons. Frustrated at the instructional time both missed, I assumed there must have been a valid reason for such action. However, after class, conversations with my students clearly indicated otherwise. One of the boys, M, was currently homeless. The other, J, had a particularly involved mother, in both her son’s life and the school community. J had recently gotten a Swiss army knife as a present, complete with an array of gadgets. He sold it to M for whatever change M had in his pocket, approximately \$1.42. Neither boy had any history of violence or even anger—M was a quiet, reserved, even docile student and J was an outgoing, gregarious student. Yet this simple exchange between the two simultaneously labeled both dangerous criminals and removed them from their academic studies. A feeling of total helplessness compounded my frustration.

<sup>663</sup> MaryAnn Martinez, “Students Arrested, Suspended after Days of Food Fights,” *KENS 5*, October 23, 2015, <http://www.kens5.com/story/news/2015/10/23/students-arrested-suspended-after-days-food-fights/74500582/>; Patrick Michels, “A Year of Cops in the Classroom,” *The Texas Observer*, December 21, 2015, <http://www.texasobserver.org/school-to-prison-pipeline-year-in-review/>. The second article includes several other incidents including the nationally covered case of 14-year-old Ahmed Mohamed’s arrest for bringing a homemade clock to school because a teacher thought it resembled a bomb.

pulling a fire alarm, while a white ninth grader doing the same thing in the same district received a single day suspension.<sup>664</sup>

## **DISPROPORTIONATE CORPORAL PUNISHMENT**

Corporal punishment remains legal in Texas Public Schools today, a fact that has garnered increasing media attention in the last ten years.<sup>665</sup> Statistics from the Office for Civil Right at the United States Department of Education for the 2006-2007 school year cited 223,190 students receiving corporal punishment. Injuries from those punishments prompt 10,000 to 20,000 students to seek medical treatment annually.<sup>666</sup> Of all states, Texas had the largest number of students punished with 49,197.<sup>667</sup> This same report emphasizes the rate of paddling in Texas schools: “Texas paddles the most students in the nation, as well as the most students with disabilities: OCR data show that 10,222 students with disabilities were subjected to corporal punishment in the 2006-2007 school year, more than in any other state.”<sup>668</sup> While most states and districts have outlawed corporal punishment, the sheer numbers of students still subjected to this practice merits

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<sup>664</sup> United States, *Ending the School-to-Prison Pipeline*.

<sup>665</sup> Dillon, “Disabled Students Are Spanked More”; “One Way to Guarantee More Trouble for Schools,” *The New York Times*, July 30, 2011, sec. Opinion / Sunday Review, <http://www.nytimes.com/2011/07/31/opinion/sunday/one-way-to-guarantee-more-trouble-for-schools.html?scp=7&sq=texas%20school%20disabilities&st=cse>; Sam Dillon, “Racial Disparity in School Suspensions,” *The New York Times*, September 13, 2010, sec. Education, <http://www.nytimes.com/2010/09/14/education/14suspend.html?scp=15&sq=texas%20school%20discipline&st=cse>; Schwarz, “Texas Study Raises Questions About Impact of School Discipline.”

<sup>666</sup> Wasserman, “Corporal Punishment in K-12 Public School Settings.”

<sup>667</sup> “A Violent Education.”

<sup>668</sup> “Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools,” *American Civil Liberties Union*, accessed August 21, 2013, <https://www.aclu.org/human-rights/impairing-education-corporal-punishment-students-disabilities-us-public-schools>.

further inquiry, especially as it again disproportionately impacts students based on axes of their identity.

The 2009 ACLU and Human Rights Watch publication, “Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools,” details several disturbing instances of physical punishment of students with disabilities in Texas public schools.<sup>669</sup> The report highlights the story of one student’s violent beating as evidence of how such episodes leave lasting injuries and erect barriers to education:

Deena S.’s middle school son, who has attention deficit hyperactivity disorder (ADHD), was badly bruised from paddling: “They were deep bruises. Not marks. They measured three inches by four inches. In the center of the bruises it was kind of clear. They ended up turning real dark. This wasn’t just a little red mark, this was almost black.”<sup>670</sup>

Another parent, Charles B., the father of an 11-year-old Texas boy diagnosed with attention deficit hyperactivity disorder and dyslexia, describes a paddling his son received in early 2009 that left the child unable to breathe and covered in severe bruises. Still another incident involved a three-year old boy, diagnosed with ADHD, attending public pre-kindergarten. Paddled for playing with an air conditioner and taking off his shoes, the child sustained extensive bruising and injuries.<sup>671</sup> In each of these cases, the child’s punishment resulted from a minor infraction related to their disability. As the ACLU notes, United States federal law remains unclear on the permissibility of corporal punishment for behaviors resultant from a student’s disability.<sup>672</sup> While the Individuals with Disabilities Education Act (IDEA) prohibits “changes of placement,” including

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<sup>669</sup> Ibid.

<sup>670</sup> Ibid. p. 4.

<sup>671</sup> Ibid. p. 36.

<sup>672</sup> Chapter 7 really does cover this in more detail.

expulsions or extended suspensions, for conduct related to a disability, such terminology excludes in-class discipline.<sup>673</sup> Despite this, scholars demonstrate that the rate of exclusionary discipline for students with disabilities remains disproportionately high.<sup>674</sup>

A wide variety of studies demonstrate that corporal punishment disproportionately impacts students with disabilities. The ACLU and Human Rights Watch 2009 report further details that students with disabilities made up 18.8 percent of students corporally punished at school in the 2006-2007 school year.<sup>675</sup> The report notes that U.S. schools physically punished at least 41,972 students with disabilities during that year. Further, as the study notes, these numbers likely underestimate the problem given that not all instances of physical discipline get reported or recorded.<sup>676</sup> While students labeled disabled more often receive corporal punishment, race further complicates this connection, as students of color are both more likely to be diagnosed as disabled and more likely to be punished at school.<sup>677</sup> *A Violent Education* highlights this disproportionate impact citing corporal punishment's excessive effect on African-American and, in some areas, Native American students.<sup>678</sup> That study notes that in the

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<sup>673</sup> Ibid.; For a more detailed explanation of special education law and the school-to-prison pipeline see Dean Hill Rivkin, "Decriminalizing Students with Disabilities," *New York Law School Law Review* 54 (2010 2009): 909.

<sup>674</sup> Fabelo et al., "Breaking School's Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement"; Jacob L. Williams et al., "The Enemy Among Us Do School Administrators Perceive Students With Disabilities as a Threat?," *NASSP Bulletin* 97, no. 2 (June 1, 2013): 139-65, doi:10.1177/0192636512473507.

<sup>675</sup> "Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools | American Civil Liberties Union," accessed August 12, 2011, <http://www.aclu.org/human-rights/impairing-education-corporal-punishment-students-disabilities-us-public-schools>.

<sup>676</sup> Ibid.

<sup>677</sup> This is where Shirley pointed out the "racialization of disability." Consider this once the theory has been re-written.

<sup>678</sup> "A Violent Education."



2006-2007 school year, African-American students represented 35.6 percent of those students paddled despite comprising only 17.1 percent of the nationwide student population. In another statistic illustrating the extent of the problem, the authors found that schools paddled African-American students at 1.4 times the rate expected given their percentage of the student population. Gender further plays a role in the distribution of both corporal punishment and harsh disciplinary action. *A Violent Education* also notes that schools paddled boys of all races more than girls, while also finding that African-American girls were punished at more than twice the rate of their white peers.<sup>679</sup>

Quantitative research adds another dimension to understanding the physical punishment of students of color and students with disabilities, categories with substantive overlap, in public schools. In 2009, a *Texas Tribune* review of state data found that Texas public school educators used physical restraints on students with disabilities roughly 100 times a day the previous school year, meaning they forcibly pinned down students with disabilities more than 18,000 times that year.<sup>680</sup> While officials caution that data on student restraints is not comparable across states, even within inconsistencies in reporting, Texas appears to restrain students more often than other states.<sup>681</sup> Writing for the *Tribune*, Emily Ramshaw also quotes Deborah Fowler, an attorney with Texas Appleseed, who further contextualizes that Texas' figures are likely artificially low; "Because they don't have to report it, school districts will often call in a police officer to make a restraint, instead of having the teacher do it."<sup>682</sup>

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<sup>679</sup> Ibid.

<sup>680</sup> Ramshaw, "Disabled Students Restrained, Injured in Public Schools."

<sup>681</sup> Ibid. Ramshaw notes, "California—which has 2 million more public school students than Texas—reported about 14,000 instances of restraint, seclusion, or other emergency interventions during the 2007-08 school year," to Texas' 18,000 instances of restraint alone."

<sup>682</sup> Ibid.

As demonstrated earlier, corporal punishment's long history in Texas has not been without opposition, and today corporal punishment does not remain in the majority of Texas school districts, though more than 40 percent retain the practice.<sup>683</sup> In 2014 the *Houston Chronicle* published an interactive map using data collected from the U.S. Department of Education for the 2011-12 school year, showing how widespread the practice remains across the state, despite the fact that the state outlawed beating prisoners in 1941.<sup>684</sup> Still, the practice shows signs of decline, down 80 percent from 2001 to 2012, and is now banned in the state's largest urban districts.<sup>685</sup> Of the 100 largest school districts across the state, all but Garland, Texas have banned corporal punishment.<sup>686</sup> The *Chronicle* reports "educators indicate pops in the principal's office will never disappear without legislation, because Texas is a state of entrenched rural values and emphasis on local control."<sup>687</sup> This simplistic analysis ignores the racial disparities in rates of corporal punishment and ignores the roots of local control.

State Representative Alma Allen, a Houston Democrat and black educator representing a predominantly minority district, has introduced legislation attempting to

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<sup>683</sup> News regarding a national movement against paddling appears in many news sources. One from The Associate Press, August 25th, 1987, demonstrates the length of this discussion, and includes groups such as End Violence Against the Next Generation.

<sup>684</sup> Mark Collette, "Texas Holds Tight to Tradition on Corporal Punishment," *Houston Chronicle*, November 14, 2014, <http://www.houstonchronicle.com/news/education/article/Texas-holds-tight-to-tradition-on-corporal-5893764.php>.

<sup>685</sup> Ibid.

<sup>686</sup> In Texas this includes Austin, Fort Bend, Houston, North East, Northside (San Antonio), Cypress Fairbanks, El Paso, Fort Worth, Ysleta (El Paso), San Antonio, Arlington, Dallas, Plano, and Aldine. While Aldine, Texas is listed in places as permitting corporal punishment, "A Violent Education" notes that the Human Rights Watch has email correspondence on file from the Assistant Superintendent of Administration in the district in 2008 that indicates that Aldine ISD does not permit corporal punishment.

<sup>687</sup> Collette, "Texas Holds Tight to Tradition on Corporal Punishment."

ban corporal punishment, which she describes as child abuse.<sup>688</sup> Since 1987 at least nine statewide bans appeared before the legislature and not a single of those bills made it out of committee.<sup>689</sup> Covering the defeat of one such piece of legislation in 2011, *The Texas Tribune* published the following paragraph:

“One of the biggest problems teachers faced is discipline in the schools,” said Bill Zedler, R-Arlington. He said “spit-wads and that sort of thing” were the biggest problems in classrooms 30 or 40 years ago and that teachers face much more serious discipline problems now. “The very parents who will allow schools to use corporal punishment are the ones that have good discipline at home,” he said. “Then we expect the teacher to teach and then at the same time we’re taking all the tools away.”<sup>690</sup>

Here Representative Zedler’s language reveals the racial anxieties undergirding the opposition to such a ban, evoking a peaceful past prior to integration. However, this defeat failed to deter Representative Allen. In 2012, state lawmakers passed a compromised version of one Allen’s measures, allowing parents the power to stop school districts from using force by completing a written statement. She continued her efforts in 2013 and while no statewide plan is yet in place Representative Allen remains in office.<sup>691</sup>

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<sup>688</sup> Andrew Weber, “Update: Protesters Gather Against Paddling,” *The Texas Tribune*, March 15, 2011, <http://www.texastribune.org/2011/03/15/update-protesters-gather-against-paddling/>. Representative Allen has introduced multiples pieces of legislation including 2011’s H.B. 359.

<sup>689</sup> Collette, “Texas Holds Tight to Tradition on Corporal Punishment”; Florian Martin, “One Houston Man’s Fight Against Corporal Punishment In Texas,” *Houston Public Media*, January 15, 2014, <http://www.houstonpublicmedia.org/articles/news/newslab/2014/01/15/48724/one-houston-mans-fight-against-corporal-punishment-in-texas/>.

<sup>690</sup> Ross Ramsey, “House Says No to Parental Consent for Spanking,” *The Texas Tribune*, May 11, 2011, <http://www.texastribune.org/2011/05/11/house-says-no-to-parental-consent-for-spanking/>.

<sup>691</sup> Erin Mulvaney, “Houston Lawmaker’s Bill Would Stop ‘Paddling’ in the Classroom,” *Houston Chronicle*, March 4, 2013, <http://www.chron.com/news/houston-texas/houston/article/Houston-lawmaker-s-bill-would-stop-paddling-in-4327053.php>.

## TODAY'S TRIPARTITE SEGREGATION

Despite the formal repeal of segregation, the end of segregation proves a non-event in terms of achieving educational equity because the schools, in Texas and around the country, never desegregated. A 2002 *Dallas Morning News* article cited DISD's student population as 7 percent white and 93 percent minority.<sup>692</sup> A 2005 study by Gary Orfield at Harvard demonstrated the persistent segregation in DISD, with all but three of the district's 219 schools being mostly non-white, despite the lifting of the desegregation order in 2006.<sup>693</sup> Controversy over continued segregation in the district has not abated. On May 3, 2013, *The Dallas News* ran an article highlighting key statistics relevant to Dallas, including that less than five percent of students in the Dallas Independent School District (DISD) today are white, down from 60 percent in 1970—a year in which civil rights advocate filed suite against Dallas Independent Schools for failure to adequately desegregate.<sup>694</sup> That segregation increased in DISD over the last forty years demonstrates the insufficiency of legal remedy along with more fundamental systemic elements. The existence of these connections between schools, race, and achievement continues to be the subject of both quantitative and qualitative research, continually burdened with the task of demonstrating persistent racial disparity.

Various studies demonstrate that re-segregation by race and class has resulted in continued and perhaps more deeply entrenched disparities. In 2013, Julian Vasquez

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<sup>692</sup> Parks, "Integration Plan Went down Tubes - DISD, Judge Saw TV Time as Busing Option, but Suit Parties Didn't."

<sup>693</sup> Holly K. Hacker, "Study: School Segregation Not Gone - Report Cites Disparities among Students Both Nationally, Locally," *Dallas Morning News, The (TX)*, February 16, 2005, COLLIN COUNTY edition. Cites [civilrightproject.harvard.edu](http://civilrightproject.harvard.edu).

<sup>694</sup> "Texas Leaders, Educators and Courts Grapple with Segregated Public Schools," accessed August 22, 2013, <http://www.dallasnews.com/news/education/headlines/20130503-texas-leaders-educators-and-courts-grapple-with-segregated-public-schools.ece>.

Heilig and Jennifer Jellison Holme made headlines for their work, “Study Shows Jim Crow-Era Segregation Persists in Texas Schools.” The necessity and news-worthiness of their study demonstrates how the current segregation of Texas’ public schools eludes public perception. By analyzing Texas Education Agency (TEA) school-level data, Heilig and Holme provide quantitative illustrations of the ongoing substantive racial segregation in Texas public schools. Furthermore Heilig and Holme’s 2013 study goes further than simply naming contemporary segregation by illuminating its nuances throughout the state, showing segregation of black, Hispanic, and white students, a phenomenon they term “triple segregation.”<sup>695</sup> Finding more than half of Texas schools majority African American and Latino combined, Heilig and Holme also determine that 46 percent of urban schools and 20 percent of suburban schools qualified for the designation “intensely segregated,” meaning that 90 percent or more of students are African American and Latino combined. Importantly, Heilig and Holme also demonstrate that such isolations link to school performance, finding majority African American and Latina/o schools 48 percent less likely to receive an “exemplary” rating than majority white schools.

Heilig and Holme’s research also reveals Texas public schools entrenched segregation not only by race/ethnicity, but also by English language ability and socioeconomic status.<sup>696</sup> Other scholars also establish both the extent of Texas

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<sup>695</sup> Julian Vasquez Heilig and Jennifer Jellison Holme, “Nearly 50 Years Post-Jim Crow Persisting and Expansive School Segregation for African American, Latina/o, and ELL Students in Texas,” *Education and Urban Society* 45, no. 5 (July 1, 2013): 609–32, doi:10.1177/0013124513486289.

<sup>696</sup> Without explicitly discussing the school-to-prison pipeline, Heilig and Holme’s study introduces several related key issues by highlighting the intimate connection between racial identity and school assignment, linking issues of class to both race and school segregation, and finally, by demonstrating the importance of issues of language, highlighting the historical disenfranchisement of English Language Learner (ELL) students. Additional findings from Heilig and Holme’s study focus on this relationship between economic disadvantage and ELL status.

segregation by race and its links to inequity.<sup>697</sup> Guadalupe San Miguel and Richard Valencia highlight the severity of segregation for Mexican American and other Latino students in Texas using data from the Mexican-American Education Study (MAES) Report authored by the U.S. Commission on Civil Rights, a report that further demonstrates disparities by race in academic performance, high school retention, curriculum differentiation, language exclusion, and enrollment in higher education.<sup>698</sup> Additionally, structural practices, such as tracking, continue to segregate within theoretically diverse schools.

While this structural racism often remains obscured, cases of overt racism also still make the news. A 2006 case against DISD found the school principal guilty of improperly segregating students by assigning most minority students to classes for Spanish-speaking students regardless of their actual language skills.<sup>699</sup> Synthesizing the problem of school segregation for a University of Texas press release, Heilig said “50 years after the *Brown v. Board of Education* ruling, the data reveals that very little has actually changed when it comes to the segregation of African Americans and Latinos in our schools. Despite rhetoric to the contrary, demographics are still determining destiny

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<sup>697</sup> Gary Orfield and Franklin Monfort, *Status of School Desegregation: The next Generation* (Alexandria, VA: National School Boards Association Council of Urban Boards of Education, 1992) note “Hispanic students attending schools in California and Texas experience greater segregation than Blacks in Alabama and Mississippi.”

<sup>698</sup> San Miguel Jr. and Valencia, “From the Treaty of Guadalupe Hidalgo to Hopwood: The Educational Plight and Struggle of Mexican Americans in the Southwest,” in Andrews, Flores, and Reddick, *Legacies of Brown*.

<sup>699</sup> Kent Fischer, “Lawyers Want DISD to Foot Legal Bill in Segregation Case - \$596K Sought; Judge Had Found Only Preston Hollow Principal Liable,” *Dallas Morning News, The (TX)*, December 19, 2006, FIRST edition. The Dallas Morning News” ran an article describing how lawyers in the case against Dallas Independent School District’s (DISD) Preston Hollow Elementary School wanted DISD to pay their expansive legal bills.

in Texas.”<sup>700</sup> Heilig and Holme’s work is among a set garnering headlines as it demonstrates both how news outlets occasionally call attention to the situation and how this crisis maintains a sort of stasis.

A recent examination of the extent of segregation again demonstrates hyper-segregation in many districts declared desegregated.<sup>701</sup> Drawing on survey data from the U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), Reardon et. al. list the total enrollment for each district, in Texas outlining the percentages of white students, the percentages of black students exposure to white students, and the percentages of Latino exposure to white students for both the 2001-2002 school year and the 2011-2012 school year. This data lists Dallas ISD as having terminated desegregation plans in 1994 and counts its student population at 156,006. Among that in 2001-2002, 7.2% of students were white, and in 2001-2012 that number shrunk down to 4.7%. This small number of white students in the district meant that rates of Black and Latino student exposure to whites are predictably small, 3.1 and 3.9 percent respectively in the 2001-2012 school year.<sup>702</sup>

Scholars presenting the current quantitative reality of this complicated landscape make headlines because the burden of proof continues to lie on those demonstrating the very existence of segregation in our schools following the repeal of policies explicitly establishing or enforcing segregation. While reporters and scholars alike often elucidate key contributing factors to today’s segregated schools—including continued white flight,

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<sup>700</sup> Heilig and Holme, “Nearly 50 Years Post-Jim Crow Persisting and Expansive School Segregation for African American, Latina/o, and ELL Students in Texas.”

<sup>701</sup> Reardon et al., “Brown Fades.”

<sup>702</sup> Ibid.; “Common Core of Data (CCD),” accessed January 15, 2015, <http://nces.ed.gov/ccd/pubschuniv.asp>.

private schools, magnet schools, and home schooling—the notion of voluntary rather than systemic racial segregation changes the tenor of the dialogue. As these scholars, legal and otherwise, explain the existence of de facto segregation, such explanations rarely explicitly grapple with its constitutive relationship to the history of the public school system. Yet doing so demonstrates precisely how the foundational de jure elements continue to shape the existing system and, in fact, resist substantive challenges to their existence. Doing so requires interdisciplinary methodology, in part because the historical inquiry of public school presents a real challenge. Yet these theoretical scholarly advances have not yet challenged the prevalence of absolute spaces, such as school districts.<sup>703</sup> Thus a future challenge in examining the history of public school lies both in the units of analysis and the seeming erasure of the recent history of schools.<sup>704</sup>

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<sup>703</sup> Boundaries play a constitutive role in defining the school system. While this project focuses primarily on the twentieth century, this section examines origin narratives related to this project's specific spatial boundaries, those of the state of Texas. Geographer Christine Drennon's "Construction and Maintenance of School Districts in San Antonio, Texas," examines the constitutive role of geographic boundaries in maintaining inequity. Between 1970 and 2003 more than 140 court cases across the country used statistics, maps, and stories, to demonstrate inequity, a move that Drennon notes presumes the political spaces of school districts to be, "absolute, timeless, and independent." Taking school districts as objective entities rather than constitutive of the race and class relations actually under scrutiny of the court "further legitimates local geographies of privilege and deprivation." Drennon further argues that the process of explaining the story of a various school district in court assumes that the district is "the source of its own identity, its own problems, and its own solutions; they are absolute spaces and as such exist separate from one another and apart from which they contain." Drennon's describes geographers' orientation to space "as theoretically relational and dynamic as opposed to absolute and static." Christine Drennon describes geographers' orientation to space "as theoretically relational and dynamic as opposed to absolute and static." Drennon draws on theorists within geography like Doreen Massey who herself builds upon Jacques Derrida's conclusions around the necessity of established difference in the creation of identity. Drennon's emphasis on challenging fixed notions of boundaries, particularly the space of the school district itself, provides both a guide and a subset for the larger argument about space in this project. Putting Derrida in conversation with Waquant, the establishment of difference both determines the identity of the centered subject and provides the grounds on which the larger body politic may determine inclusion and exclusion. Determining inclusion and exclusion requires real work by individual actors—legislation, litigation, and repression.

<sup>704</sup> Whereas departments studying the history of education once lived within schools of education, such programs now command far fewer institutional resources, an erasure consistent with the onset of neoliberalism.



Boundaries and buildings play a key way race and ability segregation has been historically constituted and maintained. Testing is another technology with a similar image of definitions of race and ability.

### **HIGH STAKES TESTING: “A ROBUST ADVERSE EFFECT”**

In June 2013 Olesya Baker and Kevin Lang released a working paper for the National Bureau of Economics Research evaluating high school exit exams effect on a variety of factors including graduation, incarceration, employment, and earnings. While standards-based exams produced only a modest effect in most categories, Baker and Lang found such exams to have “a robust adverse effect” on incarceration, with exams increasing incarceration by about 12.5 percent.<sup>705</sup> With their study, Baker and Lang add to previous studies demonstrating the harm of such high-stakes tests and their role in the school-to-prison pipeline.<sup>706</sup> Other studies also demonstrate the particular harm wrought by high-stakes testing in the state of Texas. In their 2008 longitudinal study of student achievement in relation to Texas accountability policies, Julian Vasquez Heilig and Linda Darling-Hammond found that policies connecting testing to school-wide rewards and punishment created incentives for schools to exclude students from testing, a practice which often led to those students disappearance from school.<sup>707</sup> Heilig and Darling-

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<sup>705</sup> Olesya Baker and Kevin Lang, “The Effect of High School Exit Exams on Graduation, Employment, Wages and Incarceration,” Working Paper (National Bureau of Economic Research, June 2013), <http://www.nber.org/papers/w19182>.

<sup>706</sup> While much of this literature has been discussed throughout this project, three major reports on school to prison-pipeline are “Test, Punish and Push Out”; Fabelo et al., “Breaking School’s Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement”; Kim, *The School-to-Prison Pipeline*. Furthermore, Baker and Lang’s substantive findings got taken up by advocates and media outlets across the country.

<sup>707</sup> Heilig and Darling-Hammond, “Accountability Texas-Style.”

Hammond's study further explains the discrepancy between micro-level student data and publicly reported graduation rates, demonstrating the disproportionate impact on African American and Latino students. Creative practices to exclude students from testing included invoking categories already discussed in this project—special education and language exemptions—as well simply missing scores from student absence or disappearance.<sup>708</sup>

Presently the standardized testing regime's adverse effect on incarceration and generally exclusionary impact has been well documented. In their 2012 report *Test, Punish, and Push Out: How "Zero Tolerance" and High-Stakes Testing Funnel Youth Into the School-to-Prison Pipeline*, the Advancement Project compiles a range of statistics explicating high stakes testing circa 2009.<sup>709</sup> The report synthesizes scholarship regarding the impact of high-stakes testing on classroom instruction, including a significant narrowing of the curriculum to focus solely on tested subjects and a shift from instruction aimed at developing skills like critical thinking in favor of test-prep and "drill and kill" techniques. Furthermore, between testing and test prep, teachers report spending staggering amounts of time on standardized tests. Such pedagogical choices fundamentally change the student experience, at times creating a hostile experience by eliminating educational experiences students find engaging. The Advancement Project further synthesizes "the effect of these reforms has been that students are often viewed as little more than test scores, which has had a profoundly alienating and dehumanizing effect on many young people."<sup>710</sup> The effect continues to compound as additional consequences follow test results.

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<sup>708</sup> Ibid.

<sup>709</sup> "Test, Punish and Push Out."

<sup>710</sup> Ibid. 26.

The expansion of standardized testing did not end with the enactment of NCLB. A new group of “end-of-course” exams, mandated for graduation, passed the Texas State Legislature in 2007. The new tests, the State of Texas Assessments of Academic Readiness (STAAR), full implementation occurred with the start of the 2011-2012 school year. An NBC investigative report noted:

When the 2011 school year began, Texas high schoolers faced a barrage of new tests. Ninth-through 12<sup>th</sup> graders had to take 15 standardized tests before they could graduate instead of four, more than any other state in the nation. STAAR also decreed that the new tests would account for 15 percent of graduating seniors’ grades.

The expansiveness of governmental intervention here bolstered already existing anti-testing groups and illuminated to the extent of the logical fallacy equating standardized testing with successful reform. The same article recounts why this intervention set off opposition when those earlier assessment regimes did not:

Testing had remained viable with politicians and parents in large part because it seemed to be about improving the performance of troubled schools, holding teachers and administrators accountable for the quality of their students’ education and ensuring that high school seniors deserved a diploma. But now it was going to affect the resumes of college-bound seniors.<sup>711</sup>

While students who traditionally performed well enough on tests to simply pass previously felt minimal impact from the provisions, this extension into grades meant all students would feel the tests’ impact, a particularly frightening prospect in a state where grades and class rank are a key determinant of admission to the state’s flagship institution.

Opposition to the proposition further took the form of more than one hundred districts signing a petition articulating the harm wrought by testing in its current form. In

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<sup>711</sup> Schone and editor, “Enough! Facing Backlash from Parents, Texas Cuts Back on Student Testing.”

March 2012 *The Washington Post* published an article “In Texas, a Revolt Brews Against Standardized Testing,” which both chronicles the opposition and publishes the sample petition circulating among districts:

WHEREAS, the over reliance on standardized, high stakes testing as the only assessment of learning that really matters in the state and federal accountability systems is strangling our public schools and undermining any chance that educators have to transform a traditional system of schooling into a broad range of learning experiences that better prepares our students to live successfully and be competitive on a global stage;<sup>712</sup>

Still, the business community, many with key roles in Texas’ legislative reform landscape continued to stand by rhetoric articulating the purpose of education solely in terms of economic competition.

We simply are not improving quickly enough in the competitive world we live in,” said Justin Yancy of the Texas Business Leadership Council. The new plan would also completely eliminate the new end-of-course exams in world history and geography. “U.S. history is minimally acceptable, we believe, for a Texas graduate,” Windham explained. “If we could get ‘em past the Civil War,” Hammond said, “we’d be doing pretty good.”<sup>713</sup>

*The Texas Observer* further commented on the business community’s role “If you’re wondering why the business community is trying to call the shots about school testing, well, you must be new here. The business community wants its measurables, and it will have its measurables.”<sup>714</sup> Parents organized swiftly, and a bill decoupling the state tests

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<sup>712</sup> Valerie Strauss, “In Texas, a Revolt Brews against Standardized Testing,” *The Washington Post - Blogs*, March 23, 2012, [http://www.washingtonpost.com/blogs/answer-sheet/post/in-texas-a-revolt-brews-against-standardized-testing/2012/03/15/gIQAI5N0VS\\_blog.html](http://www.washingtonpost.com/blogs/answer-sheet/post/in-texas-a-revolt-brews-against-standardized-testing/2012/03/15/gIQAI5N0VS_blog.html).

<sup>713</sup> The Texas Observer 307 W. 7th Street Austin and Texas 78701 1 800 939 6620 Email The Observer, “Bill Hammond and Texas Business Leaders Unveil Plan to Tweak STAAR,” *The Texas Observer*, accessed December 29, 2014, <http://www.texasobserver.org/what-does-bill-hammond-tab-want-to-do-about-staar/>.

<sup>714</sup> Ibid.

from students' grades quickly passed.<sup>715</sup> The institutionalization of standardized testing in Texas public schools plays a crucial role in identifying and labeling students.

John Oliver's humorous television show *Last Week Tonight* devoted an episode to skewering standardized testing practices in U.S. public schools.<sup>716</sup> Oliver's blend of scathing analysis and absurd comedy highlights, among other aspects, the number of tests students take, the content of the tests, and the grading process.<sup>717</sup> While Oliver traces the current state of standardized testing back to the 1990s as a response to the United States' meager international rankings, his focus is not on how high-stakes tests came to be, but on how such tests impact students. Focusing particularly on students' anxiety over standardized tests, Oliver cites the regulations for students vomiting on the exams as evidence. These regulations exist because, as the clip explains, "Teachers have reported kids crying, kids throwing up . . . it's the pressure."<sup>718</sup> The tests feel punitive to students, especially given that their results are used in a way that has real consequences for their future opportunities.

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<sup>715</sup> Not discussed here is the additional impact that Texas' Top 10% plan played here.

<sup>716</sup> LastWeekTonight, *Last Week Tonight with John Oliver: Standardized Testing (HBO)*, accessed January 4, 2016, <https://www.youtube.com/watch?v=J6lyURYVz7k>.

<sup>717</sup> While many tests questions are unavailable, contributing to the difficulty of combating poor tests, one of the most absurd anecdotes about the inadequacy of test questions and the consternation they cause test involves a story title The Pineapple and the Hare. The story, which appeared as a reading passage on a New York state English exam, makes little sense and received media attention. While it's too great a tangent for this chapter, it's worth looking up in its entirety. Eyder Peralta Twitter, "The Pineapple And The Hare: Can You Answer Two Bizarre State Exam Questions?," NPR.org, accessed January 29, 2016, <http://www.npr.org/sections/thetwo-way/2012/04/20/151044647/the-pineapple-and-the-hare-can-you-answer-two-bizarre-state-exam-questions>.

<sup>718</sup> This happened to me as a sixth grade teacher. One of my students, not wanting to cause a disturbance during the test and unable to curb her anxiety, vomited all over her textbook. In my case, students were not allowed to leave the room and the amount of follow up documentation to explain a "testing irregularity" was truly staggering.

In an attempt to mitigate this anxiety, school districts have made efforts to build up students' confidence and enjoyment around mandatory test taking.<sup>719</sup> Oliver also highlights a genre of YouTube videos demonstrating the impact of high-stakes testing. Many such videos exist, including videos purporting to help with STAAR motivation. One 2015 video published by Mesquite ISD encourages students to the tune of Taylor Swift's "Shake it Off."<sup>720</sup> The revised chorus features students singing:

I might need some mental breaks, breaks, breaks  
Since four hours it will take, take, take  
If I'm stressed I'm gonna shake, shake, shake  
Shake it off, shake it off

In each case, getting students to focus on a catchy refrain demonstrates teachers and administrators acknowledgement of the real stress students endure while taking these exams. While the videos aim to lessen the pressure such tests place on kids, their existence highlights real anxieties, and alludes to the real consequences, of high stakes testing.

A 2012 *New York Times* article covering the impact of testing on students told the story of one student, Christopher Chamness, who upon entering the third grade, began to get stomach aches before school. *The Times* notes, "his mother, Edy, said the fire had gone out of a child who she said had previously gone joyfully to his classes."<sup>721</sup> Further analysis reveals that Edy's frustration with her son's education rests less with the tests

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<sup>719</sup> Oliver's *Tonight* covers a Texas school's standardized testing pep rally featuring a monkey mascot with the voice over, "The point is those videos and monkey mascots would have you think that testing is amazing," though later chastising the monkey provides some of the segment's comic relief.

<sup>720</sup> Mesquite ISD, *Shake It off (Take the STAAR)*, accessed January 4, 2016, <https://www.youtube.com/watch?v=QH8o3mOjoRY>. Other common 2015 tunes for inspirational testing re-writes include "Let It Go" and "All About the Base."

<sup>721</sup> Morgan Smith, "Student Assessments Facing Stiff Backlash in Texas," *The New York Times*, February 4, 2012, <http://www.nytimes.com/2012/02/05/us/student-assessments-facing-stiff-backlash-in-texas.html>.

themselves than their pedagogical implications; she notes that she saw her son's classroom as a "work sheet distribution center." While Ms. Chamness ultimately pulled her son out of the standardized testing she felt destroyed his love of learning, the article notes how attendance structures attempt to preclude such protests.

Both *Last Week Tonight* and *The New York Times* attempt to articulate some of the origins and some of the ramifications of testing, and both have sufficient evidence of the tests adverse affects without linking the tests to the school-to-prison pipeline. In his segment, John Oliver says, "At this point, you have to ask yourself, if standardized tests are bad for teachers and they're bad for kids, who exactly are they good for?"<sup>722</sup> Oliver's answer includes private companies that administer the tests. According to Oliver, the largest of those private companies, Pearson, controlled 40% of testing market in 2012. "Pearson has a shocking amount of influence over America's schools." He recounts the story of a hypothetical student, who would encounter Pearson tests from kindergarten through eighth grade, which they would study for with Pearson curriculum and textbooks, taught by teachers certified by Pearson tests. If this student required evaluation for ADHD, that assessment also entails a Pearson test. And if the student got sick of this system and dropped out, attaining a GED requires yet another Pearson test. This explanation of Pearson's impact on a hypothetical student mirrors education expert Diane Ravitch's own critiques of the company, a common topic on her blog.<sup>723</sup> Pearson runs not simply the standardized tests themselves, but also has contracts for the National

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<sup>722</sup> LastWeekTonight, *Last Week Tonight with John Oliver*. In 2012, Pearson also launched PALF – the Pearson Affordable Learning Fund. A for-profit venture fund designed to support school chains in developing countries, speaks to Pearson's continued business strategy of venturing into new markets. See Stephen Ball, "Pearson and PALF: The Mutating Giant - From Crisis to Opportunity," accessed February 1, 2016, <http://www.educationincrisis.net/blog/item/1240-pearson-and-palf-the-mutating-giant>.

<sup>723</sup> "Pearson | Diane Ravitch's Blog," accessed January 29, 2016, <http://dianeravitch.net/category/pearson/>.

Assessment of Educational Progress (NAEP), the Program for International Student Assessment, and the writing portion of the Scholastic Aptitude Test (SAT).<sup>724</sup>

Pearson also, as Oliver puts it, “has enjoyed spectacular growth and profits,” a statement supported particularly by Pearson’s contracts in Texas.<sup>725</sup> The Pearson contract with Texas from 2010 to 2015 cost \$462 million, nearly half a billion dollars.<sup>726</sup> This amount represents a substantive increase even from 2000, when the Texas Assessment of Knowledge and Skills (TAKS) contract with Pearson amounted to 9.5 million. This sticker price includes services like materials, packaging and distribution, processing and scoring, and pays the salaries of approximately 1,800 staff members in Texas cities. As of 2013, Texas tested students most frequently of all states in the U.S., with students having taken at least fifteen standardized tests by graduation. This substantive infrastructure prompted one media source to note, “The state is essentially contracting Pearson to act as a for-profit arm of the state’s educational infrastructure.”<sup>727</sup> Diane Ravitch notes, “What concerns me about Pearson is that they’re buying every aspect of the educational process.”<sup>728</sup>

The proliferation of high-stakes standardized testing has brought backlash from students, parents, and, now, legislators. Resistance takes many forms including student and parent boycotts. At the same time the tests continue to have increasing ramifications, both for school accountability ratings and individual grades and graduation requirements:

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<sup>724</sup> Stanford, “A Prof Debunks Standardized Testing & Pearson Strikes Back.”

<sup>725</sup> LastWeekTonight, *Last Week Tonight with John Oliver*.

<sup>726</sup> Luke Quinton McGee Kate, “What’s in Texas’ \$500 Million Testing Contract with Pearson?,” accessed January 29, 2016, <http://kut.org/post/what-s-texas-500-million-testing-contract-pearson>.

<sup>727</sup> Ibid.

<sup>728</sup> Ibid.



There is anxiety among school leaders, educators and parents about meeting the increased standards with fewer resources. In the Panhandle, the Hereford Independent School District superintendent may withhold her district's test scores from the state. An Austin parent is considering a lawsuit to stop the rollout of the tests. Some legislators are mulling how to postpone some of the tests' consequences for students.<sup>729</sup>

In a move that received substantive media attention, Robert Scott, the Texas Education Commissioner and a longtime advocate of using standardized tests to hold schools accountable, declared student testing in Texas a “perversion of its original intent.”<sup>730</sup> As discussed in the previous chapter, Perot initiated some business reforms with an eye towards equity, but lawmakers and businessmen's lack of willingness to reckon with the fundamental racial inequity shaping American capitalism led to this contemporary implementation of testing. Tests today explicitly debilitate students while test companies themselves constitute big business.

This question of what exactly standardized tests measure remains salient. In the summer of 2012 the Texas House Public Education Committee held a hearing centered on the question, “What exactly are we getting from these tests?”<sup>731</sup> Accounts of the initial seven hours of proceedings recount witness after witness describing a broken system and attacking the legislature imposed regime in three-minute intervals. Dr. Walter Stroup, an associate professor of education at The University of Texas at Austin, spoke as a witness.<sup>732</sup> Stroup, who earned his PhD in education from Harvard, remained at the

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<sup>729</sup> Smith, “Student Assessments Facing Stiff Backlash in Texas.”

<sup>730</sup> Ibid.; Stanford, “A Prof Debunks Standardized Testing & Pearson Strikes Back.”

<sup>731</sup> Stanford, “A Prof Debunks Standardized Testing & Pearson Strikes Back.”

<sup>732</sup> Before coming to UT, Stroup worked with the Algebra Project in Boston, exposing children to basic math through cloud computing, work that earned Stroup a National Science foundation grant. Texas recruited Stroup because of this work and once in the state, he began working with Texas Instruments to use its Navigator calculator to help young students who failed the state math test. That work with Dallas-area middle-school students brought impressive results, giving Stroup and his colleagues—who observed the students performing tasks and taking practices tests—confidence in their schools. However, the state

witness table for 20 minutes, sharing his research and answering questions from the Committee. Stroup's assertion to the committee echoes previous critiques of standardized tests: the tests did not measure how much students learned at school.<sup>733</sup> This idea, that the tests measured exactly what they were designed to measure, but that they were the wrong tool for the job, firmly asserted that the millions of dollars the Legislature paid Pearson amounted to a waste of both time and money. Jason Stanford recounts the conclusion of Stroup's testimony in an article in *The Texas Observer*:

Lest anyone miss that Stroup's message threatened Pearson's hegemony in the accountability industry, Rep. Jimmie Don Aycock (R-Killeen) brought Stroup's testimony to a close with a joke that made it perfectly clear. "I'd like to have you and someone from Pearson have a little debate," Aycock said. "Would you be willing to come back?"

"Sure," Stroup said. "I'll come back and mud wrestle."

The debate never occurred. Yet Stanford argues that Pearson took note and sought to discredit Stroup using its substantial financial resources.<sup>734</sup> Pearson immediately challenged Stroup's findings. Ignoring his most compelling findings, Pearson aimed to discredit a specific figure in Stroup's analysis: Stroup's finding 72 percent of tests were

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tests did not support the gains evidenced in the classroom. The disappointing results led to Stroup to investigate and using state tests scores for every student in Texas, Stroup analysis demonstrated that, "regardless of a teacher's experience or training, class size, or any other classroom-based factor Stroup could identify, student test scores changed within a relatively narrow window of about 10 to 15 percent." Stroup's initial numbers, the ones that he shared at the legislative session, indicated that 72 percent of tests scores were "insensitive to instruction" and simply measured test-taking ability. Biographical details here are pulled from Stroup's biography on the University of Texas Website. However, on Stroup's linked website, <http://www.edb.utexas.edu/faculty/wstroup/wms.htm>, only the link on teaching works. Links to papers and bio/cv are all not live as of 2/1/2016.

<sup>733</sup> Stanford, "A Prof Debunks Standardized Testing & Pearson Strikes Back."

<sup>734</sup> Jason Stanford, writing for the *Texas Observer*, asserts that Stroup's unsatisfactory post-tenure reviews contain errors and suggests that his ratings connected to Pearson's substantive financial ties to the College of Education, despite colleagues' insistence that Stroup's ratings have nothing to do retribution. Ibid. Dianne Ravitch also wrote about Stanford's claims on her blog: Dianne Ravitch, "What Happened to the Scholar Who Challenged Pearson," Diane Ravitch's Blog, September 5, 2014, <http://dianeravitch.net/2014/09/05/what-happened-to-the-scholar-who-challenged-pearson/>.

“insensitive to instruction.” Pearson’s response noted that after fixing a mislabeled column “only 50 percent” of the test remained insensitive to instruction.<sup>735</sup> Pearson’s attack on Stroup overshadowed the company’s admission that instruction accounts for less than half of students’ test results.<sup>736</sup> Since the public hearing the Texas legislature has enacted changes.<sup>737</sup> In 2013, House Bill 5 reduced the number of high school end of course exams to five from 15. Despite both the opposition and the changes, testing in Texas public continues to reinforce existing inequities.

Jennifer Booher-Jennings conducted a case study of the impact of the Texas Accountability system, selecting an urban elementary school with nearly all Hispanic students where 90% of students received free or reduced-price lunch in 2003, a school she identifies simply as BES in the Brickland Independent School District.<sup>738</sup> Booher-Jennings argues that Brickland’s “data-driven” decision making emerges from institutional logic and that school administrators valorized the system itself, citing data-driven practices as “the variable differentiating ‘successful’ and ‘unsuccessful’ schools in the district.” While administrators referenced data widely, their decision-making centered

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<sup>735</sup> Ibid.

<sup>736</sup> A statement released by Pearson’s Senior Vice President for Measurement Services Dr. Walter (Denny) Way also suggests that the ability to predict a students’ test score based on the score from the previous year doesn’t measure test-takings skills, but rather that it “most likely reflects the fact that students are retaining what they’ve learned in previous years’ instruction and are building on that knowledge in the expected way.” Dr. Walter Way, “Statement by Dr. Walter (Denny) Way, Senior Vice President for Measurement Services, Regarding the Use of Item Response Theory to Score Standardized Tests | Pearson News,” August 2, 2012, <http://www.pearsoned.com/news/statement-by-dr-walter-denny-way-senior-vice-president-for-measurement-services/>.

<sup>737</sup> McGee, “What’s in Texas’ \$500 Million Testing Contract with Pearson?” Yet, despite such changes The Texas State Auditor found that the TEA contract with Pearson didn’t require cost itemization making financial savings difficult to track. In 2015 the Texas Legislature awarded the upcoming testing contract to Educational Testing Service (ETS) instead of Pearson.

<sup>738</sup> Jennifer Booher-Jennings, “Below the Bubble: ‘Educational Triage’ and the Texas Accountability System,” *American Educational Research Journal* 42, no. 2 (July 1, 2005): 231–68.

on TAKS data. Among the decisions such TAKS valorization prompted, students were sorted into groups based on their proximity to passing the exam. In particular, “bubble kids,” kids who were near passing, received the bulk of attention – “educational triage.” Booher-Jennings shares responses to the question “who are the bubble kids:”

The ones that will pass with a little more help. With the pink ones [the remedial kids], it's really a lost cause. They must have fallen through the cracks somehow. (Luis)

Those are the ones that you can count on to pass if you move them up a little bit. They're the ones we do one-to-one with and small group instruction in class. (Christina)

The ones who miss by one or two points--they just needed a little extra help to pass so we concentrate our attention on that group. The bubbles are the ones who could make it. (Benita)

They are your first priority, the ones whose folders you move to the top of your pile. (Milagros)

This majority of interventions thus focused on these students. Another teacher at the school describes what this means for students who aren't close to passing:

I guess there's supposed to be remediation for anything below 55, but you have to figure out who to focus on in class, and I definitely focus more attention on the bubble kids. If you look at her score [pointing to a student's score on her class summary sheet], she's got a 25%. What's the point in trying to get her to grade level? It would take 2 years to get her to pass the test, so there's really no hope for her.... I feel like we might as well focus on the ones that there's hope for.

If you have a kid who is getting a 22, even if they improve to a 40, they won't be close-but if you have a kid with a 60, well, they're in shooting range. Bush says that no child should be left behind, but... the reality in American public schools is that some kids are always going to be left behind, especially in this district, when we have the emphasis on the bubble kids. Some are ... they're just too low.

My thing is that the kids who failed shouldn't take the time away from the other kids. They failed because they weren't ready, and they weren't going to be ready. I would have retained them anyway. Out of the four [in my class] who failed, three

of them should have been retained in second [grade]. There's just too much emphasis put on these kids who failed and it's taking time away from everything else.

Booher-Jennings notes that education triage extends beyond the focus on bubble includes improving removing particular students from state accountability to improve test scores.

In the Texas Accountability System, all students are not equally valuable to the school's rating. Each school's "accountability subset," consists of "those students who "count" in a school's accountability rating," which creates an incentive for teachers and administrators to focus on "accountable students." In 2003, the accountability subset for the school and state excluded special education students taking the state's alternative test (the State Developed Alternative Assessment), students who had moved into the district after a state-determined date at the end of October, special education and English-language learners exempted by the school, and absent students. Using an institutional rather than a rational approach, teachers enact a second component of educational triage by focusing on the "accountables" and attempting to remove potentially low-scoring students from the accountability subset referring them to special education. The exemption of special education students from the accountability subset thus created incentives for teachers to have low-performers qualify for special education.

Booher-Jenning's case study further demonstrates the extent to which teachers and administrators perceive ability as both fixed and generalizable. In Brickland, following a referral to special education, students take both an I.Q. and an achievement test; "If one standard deviation exists between a student's achievement and IQ [sic]-that is, she or he is not achieving to her or his "potential"--the student qualifies for special education services." Students who score commensurate results on both assessments receive the label, "do not qualify," "DNQ" in district lingo. Booher-Jenning's writes, "The district-wide understanding of what it means to be a "DNQ" leads to a different yet

equally stigmatizing label for these students.” Interviews with administrators and teachers evidence a belief that students cannot transcend such shortcomings. One district administrator explains:

You have one set of children I haven't quite figured out what the world's going to do with. They don't qualify for special ed. It's the ones that you put in a special ed packet and the special ed people will say, "According to their IQ, they're doing the best they can." The best they can is five questions. And you're saying, I don't think they're ever going to get there. I don't know-no one has ever answered for me, what are we going to do with those? And I think, if I have a bias against the state test, it would be for those group of people. Because they don't qualify for this test, they sure can't do that test, and I think that maybe we ought to have a middle ground for them.

As another teacher explains:

I believe in holding kids back. I don't believe in social promotion. But one of these kids is a DNQ-she has an IQ of 70 and she's performing at the highest level that she can. She's never going to be able to read at a high level and she won't pass the TAKS. So why hold her back?<sup>739</sup>

The role of the teacher plays a consistently important role both in referrals and discipline, a fact that is historically salient given the predominance of white female teachers in the United States. Joel Spring and Erica Meiners both demonstrate that white women's were recruited into teaching because they were positioned as “naturally more suited to childcare,” and “in possession of purer morals.”<sup>740</sup> Teachers identity and positioning matters not only because teachers' assessments lead to evaluation or referral for special education, but also because teachers can define misbehavior. Teachers deeply ingrained

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<sup>739</sup> Ibid. Still, Booher-Jennin's analysis demonstrates many teachers willingness to go above and beyond for students in their daily practice.

<sup>740</sup> Spring, *Deculturalization and the Struggle for Equality*, 139; Meiners, *Right to Be Hostile*, 2007, 47. As Meiners also asserts, there is a clear connection here to the construction of young, single white women as “republican mothers” who had a moral duty to “civilize” new Western frontiers in the United States.

and socially constructed notions about normal acceptable behavior thus drive the treatment and categorization of students in public schools.

## PUNISHMENT AND THE PIPELINE

The role of subjectivity in referral recalls scholars on the school-to-prison pipeline who demonstrate that students of color are punished more often than white students and that their punishment is frequently more severe for less serious behaviors, despite the fact that they do not misbehave more than their white counterparts.<sup>741</sup> An ACLU fact sheet on the school-to-prison pipeline emphasizes, “African-American students are far more likely than their white peers to be *suspended, expelled, or arrested* for the same kind of conduct at school.”<sup>742</sup> As discussed earlier, the statistics regarding youth crime face the same dilemma facing all crimes statisticians.<sup>743</sup> As Khalil Muhammad argues, statistics themselves create and reinforce notions of black criminality.<sup>744</sup> Student entrance into the juvenile justice system not only minimizes their access to educational services, but also establishes a criminal record that will follow a student into adulthood, precluding their access to student loans, among other societal benefits.

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<sup>741</sup> “Education On Lockdown”; “School to Prison Pipeline: Fact Sheet (PDF) | American Civil Liberties Union,” accessed August 12, 2011, <http://www.aclu.org/racial-justice/school-prison-pipeline-fact-sheet-pdf>.

<sup>742</sup> “School to Prison Pipeline: Fact Sheet (PDF) | American Civil Liberties Union”; Skiba et al., “The Color of Discipline”; R J Skiba and K Knesting, “Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice,” *New Directions for Youth Development* 92 (2001): 17.

<sup>743</sup> In his Vollmer Aware Address, Howard N. Snyder of the Bureau of Justice Statistics at the U.S. Department of Justice wrote, “One of the great disappointments in my career was that I (and others) did not more aggressively fight the elevation of the notion of the juvenile superpredator as the reason for the increase in juvenile violent crime in the mid-1990s.” From Howard N. Snyder, “Socially Responsible Criminology: Quality Relevant Research with Targeted, Effective Dissemination,” *Criminology & Public Policy* 10, no. 2 (May 1, 2011): 207–15, doi:10.1111/j.1745-9133.2011.00701.x.

<sup>744</sup> Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, Mass: Harvard University Press, 2010).

In 2003, African-American youth accounted for 45% of juvenile arrests despite comprising only 16% of the overall juvenile population.<sup>745</sup> A statistic shared at the 2012 congressional hearing *Ending the School-to-Prison Pipeline* notes that rates of expulsion for African American male preschoolers are nine times that of African American girl preschoolers.<sup>746</sup> Additionally, a 2011 longitudinal study entitled “Breaking Schools’ Rules,” conducted with policymakers in mind as an intended audience, this longitudinal study examines trends among more than a million Texas public school students.<sup>747</sup> Key findings in the report include that nearly sixty percent of public school students were suspended or expelled between seventh and twelfth-grade, and that students who were suspended or expelled, particularly repeatedly so, were increasingly likely to be held back or to drop out and were more likely to be involved with the juvenile justice system.<sup>748</sup>

The “Breaking School’s Rules” report also found disproportionate discipline of African-American students and those labeled with particular educational disabilities.<sup>749</sup> The chart from the report reproduced below shows the disproportionate percentage of disciplinary violations attributed to African American and Hispanic students in comparison to their white counterparts.

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<sup>745</sup> From Howard N. Snyder, “Juvenile Arrests 2003,” OJJDP JUVENILE JUSTICE BULLETIN (2005), p. 9, published in “School to Prison Pipeline: Fact Sheet (PDF) | American Civil Liberties Union,” accessed August 12, 2011, <http://www.aclu.org/racial-justice/school-prison-pipeline-fact-sheet-pdf>.

<sup>746</sup> United States, *Ending the School-to-Prison Pipeline*.

<sup>747</sup> Fabelo et al., “Breaking School’s Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement.” “Breaking School’s Rules” was also among those studies cited by the Department of Education during the 2012 congressional hearings. The report was created by the Council of State Government’s Justice Center in conjunction with the Public Policy Research Institute at Texas A&M. Looking at individual school records for all seventh-grade Texas public school students from 2000 to 2002, the study accessed each grade’s student records for minimum of six-years and the state juvenile justice database, ultimately allowing for multivariate analysis.

<sup>748</sup> Ibid. ix-xi.

<sup>749</sup> Ibid., 43.



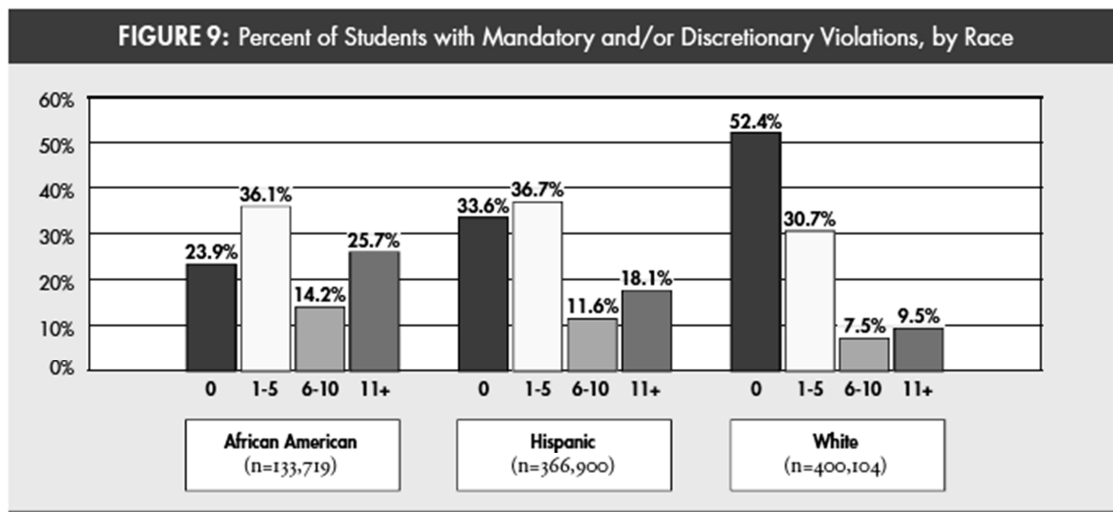


Figure 13: A reproduction of Figure 9 from “Breaking School’s Rules” showing the percentages of students with both mandatory and/or discretionary disciplinary violations broken down by racial category

Schools definitions and handling of “behavior disorders” reflects their ongoing subjectivities.<sup>750</sup> In addition to using quantitative statistics to demonstrate how minority children have been disproportionately impacted, these studies also demonstrate how subtle interactional dynamics between teacher and student are at play. That black boys are nearly three times as likely to be suspended as white boys and that black girls are suspended at four times the rate of white girls again demonstrates how the implicit norms of schools and their staff continue to prove harmful for many students.

<sup>750</sup> Angela Valenzuela covers how routine teacher’s verbal abuse of students can be in classroom situations in her book, *Subtractive Schooling: U.S.-Mexican Youth and the Politics of Caring* (Albany: State University of New York Press, 1999), p.64-64. Profiling a specific teacher who tells his students, among other things, “they’re not going anywhere,” Valenzuela notes that he communicates “a sentiment shared by teachers and other school personnel, namely that Mexican students are immature, unambitious, and defiant of authority, and that teachers have no power to change the situation since it is the students’ fault.” Noting the students extraordinary self control in the face of such abuse, Valenzuela goes on to analyze the origins of the bias of many teachers at Seguin. “Mainly white and middle-class, these adults’ more privileged backgrounds inevitably set them up for disappointment in youth whose life circumstances differ so radically from their own.”

The “Breaking Schools’ Rules” report further analyzes data by special education category, demonstrating that not only were nearly 75 percent of special education students suspended or expelled during the study, but also that those labeled “emotionally disturbed” were vulnerable to discretionary discipline.<sup>751</sup> The full breakdown of that data from the report is reproduced below.<sup>752</sup> Another chart later in the report (not reproduced here) describes the relationship between different disability categories and contact with juvenile justice. Students labeled ED were most likely to have had juvenile justice contact, with 48 percent of them having had such contact, compared to 13.1 percent of students listed as “no disability.” The “Breaking School’s Rules” also demonstrates that such percentages are not a logical outcomes of student behavior. After comparing the five largest school districts in Texas, researchers’ data showed that there was considerable variation in disciplinary rates by category both between and within districts. In sum, “Breaking School’s Rules” demonstrates the clear debilitation of both students of color and students with disabilities.

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<sup>751</sup> Fabelo et al., “Breaking School’s Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement.” xi.

<sup>752</sup> Ibid.

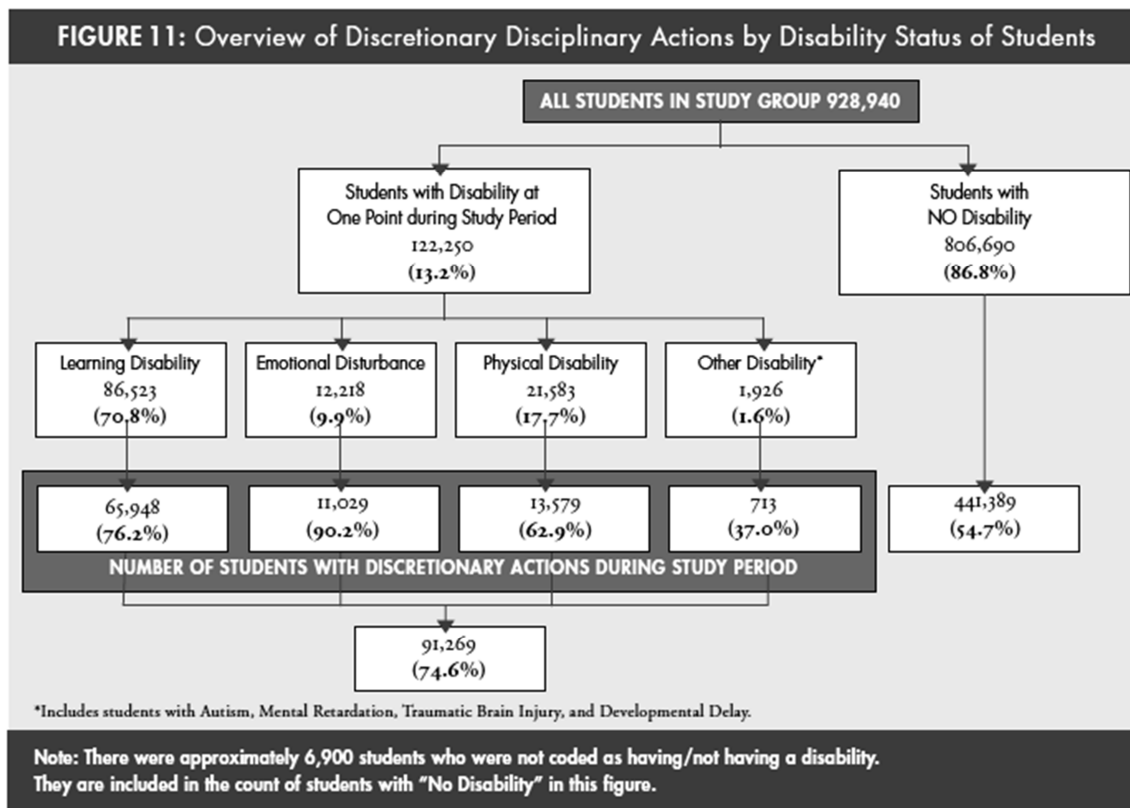


Figure 14: A reproduction of Figure 11 from “Breaking School’s Rules” showing the number of students subjected to discretionary disciplinary action by their disability status

Student experiences within the juvenile justice system also continue to reflect violence truncating students’ lives. One of the reports from the U.S. Government Accountability Office in 2009, the same one that describes Cedric’s death, “Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers,” also details the death of another student.<sup>753</sup> The report first sets up the description leading to the student’s admittance in a residential treatment center:

<sup>753</sup> “Seclusions and Restraints.”

Case 2: The victim, who died in 2005, was a 12-year-old male. Documents obtained from the Texas Department of Family and Protective Services indicate that the victim had a troubled family background. He was taken into state care along with his siblings at the age of 6. As a ward of the state, the victim spent several years in various foster placements and youth programs before being placed in a private residential treatment center in August 2005. The program advertised itself as a “unique facility” that specialized in services for boys with learning disabilities and behavioral or emotional issues. The victim’s caretakers chose to place him in this program because he was emotionally disturbed. Records indicate that he was covered by Medicaid.<sup>754</sup>

The student’s status as emotionally disturbed constitutes a key factor resulting in his admission to this institution; the label, rather than offering additional protection, debilitated this student, making him particularly vulnerable. The description of what happened next contains similar moments to Cedric’s death despite the somewhat disparate setting.

On the evening of his death, the victim refused to take a shower and was ordered to sit on an outside porch. According to police reports, the victim began to bang his head repeatedly against the concrete floor of the porch, leading a staff member to drag him away from the porch and place him in a “lying basket restraint” for his own protection. During this restraint, the 4 feet 9½ inch tall, 87-pound boy was forced to lie on his stomach with his arms crossed under him as the staff member, a muscular male 5 feet 10 inches tall, held him still. Some of the children who witnessed the restraint said they saw the staff member lying across the victim’s back. During the restraint, the victim fought against the staff member and yelled at him to stop. The staff member told police that the victim complained that he could not breathe, but added that children “always say that they cannot breathe during a restraint.” According to police reports, after about 10 minutes of forced restraint, the staff member observed that the victim had calmed down and was no longer fighting back. The staff member slowly released the restraint and asked the victim if he wanted a jacket. The victim did not respond. The staff member told police he interpreted the victim’s silence as an unwillingness to talk because of anger about the restraint. He said he waited for a minute while the victim lay silently on the ground. When the victim did not respond to his question a second time, he tapped the victim on the shoulder and rolled him over. The staff member observed that the victim was pale and could not detect a pulse. All efforts to revive the victim failed, and he was declared dead at a nearby hospital.

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<sup>754</sup> Ibid., 30.

While the Texas Department of Family and Protective Services determined the victim's death to be the result of physical abuse, the death certificate listed the incident as an accident. A grand jury opted not to press charges against the staff member responsible for restraining the student.<sup>755</sup>

House Bill 171 in June 2009 began the reform of zero tolerance, but ultimately did not allow parents or students due process.<sup>756</sup> The increasing realization that African-American youth and students with disabilities face a disproportionate brunt of sanctions has led to action on the part of legislators. The critique also carried over to the state ticking law, which dozens of witness described as out of control. A 2012 Texas Appleseed report garnered national attention after a survey of eleven public school districts serving a quarter of Texas children, demonstrated that Texas' spending on disciplinary programs and school security amounts to \$227 million a year. As Chris Tomlinson of the *Associated Press* noted, "Texas Appleseed released the report a day before the Texas Senate meets to discuss how schools treat troublesome students."<sup>757</sup> In 2013, Texas prosecuted approximately 115,00 such cases resulting in about \$10 million in related court costs and fines for students in the 2014 fiscal year.<sup>758</sup> In summer 2015,

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<sup>755</sup> The GAO report does note that a sibling of victim received a civil settlement against both the program and the staff member. The amount remains undisclosed.

<sup>756</sup> On October 31, 2012 the Houston Chronicle ran an article by Mike Ward of the Austin-American-Statesman, "Legislature; School discipline policies under fire."

<sup>757</sup> Associated Press, "11 Texas School Districts Spent \$140M on Discipline," *Brownsville Herald*, October 29, 2012, [http://www.brownsvilleherald.com/news/local/article\\_df2bc654-21f7-11e2-ba28-001a4bcf6878.html](http://www.brownsvilleherald.com/news/local/article_df2bc654-21f7-11e2-ba28-001a4bcf6878.html); *ibid.*; "11 School Districts Spend \$227M on Discipline Programs, Security," *Texarkanagazette.com*, accessed February 3, 2016, <http://www.texarkanagazette.com/news/national/story/2012/oct/30/11-school-districts-spend-227m-discipline-pro/268749/>.

<sup>758</sup> The Associated Press, "Texas Law Decriminalizes School Truancy," *The New York Times*, June 20, 2015, <http://www.nytimes.com/2015/06/21/us/texas-law-decriminalizes-school-truancy.html>.

Texas Governor Greg Abbott signed a law that decriminalized school truancy. Additionally, some Texas schools implemented pilot programs in “restorative discipline.”<sup>759</sup> While all of these reforms represent some move in the right direction, substantive reform requires without grappling more fully with the history of categories undergirding public schools.

There are some signs of progress regarding the school-to-prison pipeline. The naming and recognition of the phenomena is one of the first. Additionally, Texas legislators have recently taken some steps to reduce the amount and burden of standardized testing.<sup>760</sup> In 2012, the United States Senate Committee on the Judiciary hosted a hearing on the school-to-prison pipeline.<sup>761</sup> Senator Richard J. Durbin’s opening remarks at the hearing “Ending the School to Prison Pipeline,” introduced the audience, filling the chamber and the overflow room, to the subject by stating “For many young people, our schools are increasingly a gateway to the criminal justice system.”<sup>762</sup> Senator Durbin continued:

This school-to-prison pipeline has moved scores of young people from classrooms to courtrooms. A schoolyard fight that used to warrant a visit to the principal’s office can now lead to a trip to the booking station and a judge. Sadly there are schools that look more like prisons than places for children to learn and grow. Students pass through metal detectors and police roam the halls.<sup>763</sup>

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<sup>759</sup> Francisco Vara-Orta, “One S.A. School Changed Its Discipline Culture - Can Others?,” *San Antonio Express-News*, July 11, 2015, [http://public.tableau.com/views/Out-of-schoolsuspensions/Dashboard1?:embed=y&:showVizHome=no&:host\\_url=https%3A%2F%2Fpublic.tableau.com%2F&:tabs=no&:toolbar=yes&:animate\\_transition=yes&:display\\_static\\_image=no&:display\\_spinner=no&:display\\_overlay=yes&:display\\_count=yes&:showVizHome=no&:showTabs=y&:loadOrderID=0&:increment\\_view\\_count=no](http://public.tableau.com/views/Out-of-schoolsuspensions/Dashboard1?:embed=y&:showVizHome=no&:host_url=https%3A%2F%2Fpublic.tableau.com%2F&:tabs=no&:toolbar=yes&:animate_transition=yes&:display_static_image=no&:display_spinner=no&:display_overlay=yes&:display_count=yes&:showVizHome=no&:showTabs=y&:loadOrderID=0&:increment_view_count=no).

<sup>760</sup> Schone and editor, “Enough! Facing Backlash from Parents, Texas Cuts Back on Student Testing.”

<sup>761</sup> United States, *Ending the School-to-Prison Pipeline*.

<sup>762</sup> Ibid.

<sup>763</sup> Ibid.

Senator Durbin's remarks outline some qualitative aspects of the pipeline, aspects described by most scholars of the pipeline, without specifically tying the pipeline to the afterlife of slavery.<sup>764</sup> Representative Bobby Scott followed Senator Durbin by summarizing more of the academic research, offering a similar explanation of the pipeline in his opening statement:

The school-to-prison pipeline arises when overly harsh, nondiscretionary school discipline practices such as zero tolerance policies are applied to address even minor misbehavior through harsh disciplinary actions that are ineffective and often counterproductive. Research shows that these get-tough approaches to discipline not only reinforce bad behavior, but also set up a progression from disciplinary proceedings to suspensions, expulsions, arrests, juvenile or criminal proceedings, jail, and then prison.<sup>765</sup>

This emphasis on the harsh disciplinary policies again ignores the origin of the problem. The pipeline impacts only some of the public school population, disproportionately funneling debilitated students into the U.S. justice system.<sup>766</sup> At the same congressional hearing, Judith Browne Dianis, the co-director of the Advancement Project in Washington D.C., emphasizes that stark racial disparities result not from more misbehavior by students impacted by the pipeline, but rather increased punishment for discretionary offenses such as disrespect or disruption.<sup>767</sup>

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<sup>764</sup> One scholar who does this explicitly is Erica Meiners. Meiners links physical structures of schools resemblance to prisons to the larger relationship between incarceration and schools, invoking the term "civil death" from Ruth Wilson Gilmore's work. Meiners, *Right to Be Hostile*, 2007, 4.

<sup>765</sup> United States, *Ending the School-to-Prison Pipeline*.

<sup>766</sup> India Geronimo, "Systemic Failure: The School-to-Prison Pipeline and Discrimination against Poor Minority Students," *Journal of Law in Society* 13 (2012 2011): 281; Rivkin, "Legal Advocacy and Educational Reform Litigating School Exclusion." Legal scholars have led the way in defining and describing the school-to-prison-pipeline. See also those resources in the previous notes.

<sup>767</sup> Dianis also noted in her testimony, "Suspensions, expulsions, and arrests are disproportionately borne by young people of color, students with disabilities, and lesbian, gay, bisexual, transgender, and queer youth." Dianis' testimony emphasizes the extent to which the pipeline further polices gender and sexual identity, neither of which this project grapples with in detail.

Representative Scott goes on to emphasize the pipeline's disproportionate impact in his remarks at the Congressional hearing stating, "Minority students are much more likely to be subject to the pipeline than white students who commit similar infractions, and students with disabilities are more likely to receive one or more out-of-school suspensions than those without disabilities."<sup>768</sup> In this statement, again summarizing other research, Representative Scott's separation of "minority students" and "students with disabilities" implies that they are separate groups. Other remarks emphasize this separateness. Deboarah Delisle, the Assistant Secretary for Office of Elementary and Secondary Education in the U.S. Department of Education, further notes, "When African American students are more than three and a half times as likely to be suspended or expelled as their white peers, or students with disabilities are twice as likely to receive out-of-school suspensions as their non-disabled peers, as they are today, it raises substantial concerns."

The consistency of these remarks reflects the scholarly consensus about the pipeline's existence, with students of color often separated from students with disabilities.<sup>769</sup> Combating the pipeline by considering it either singular or isolated obscures its deep connections with the past, present, and future of public education, the formation and perpetuation of ways of knowing, and to subject and state formation. Connecting this phenomenon to these larger questions about the connections between race, ability, and punishment allows for a deeper understanding of the school-to-prison

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<sup>768</sup> United States, *Ending the School-to-Prison Pipeline*.

<sup>769</sup> Testimony at the 2102 hearing included examples like the mother of an 11-year-old in Galveston, whose son charges with criminal assault for what she says involved defending himself against a bully. From Mike Ward, "School Discipline Policies Criticized at Hearing," Houston Chronicle, October 30, 2012, <http://www.houstonchronicle.com/news/houston-texas/houston/article/School-discipline-policies-criticized-at-hearing-3994867.php>.



pipeline's existence, rather than the more commonly held explanation that the pipeline emerges in the 1990s.<sup>770</sup>

## CONCLUSION

In a recent essay, Ta-Nehisi Coates shared some of his despair regarding the current political moment. While his essay addresses contemporary politics, his analysis mirrors a central argument in this dissertation: historical amnesia authorizes both today's racialized deployment of disability categorization and the school-to-prison pipeline. Coates writes, "I have spent the past two years somewhat concerned about the effects of national amnesia, largely because I believe that a problem can not be effectively treated without being effectively diagnosed. I don't know how you diagnose the problem of racism in America without understanding the actual history."<sup>771</sup> The history of Texas schools is explicitly racist and disproportionate impact remains clearly recognizable

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<sup>770</sup> The phrase school-to-prison pipeline also recently received attention from the Obama administration, as part of President Obama's 2014 launch of an initiative called "My Brother's Keeper," aimed particularly at problems facing young men of color, part of which included a set of recommendations on classroom discipline. Both Attorney General Eric Holder and Education Secretary Arne Duncan presented the new guidelines, citing the particular harm wrought by zero-tolerance discipline policies on students of color. Holder and Duncan specifically used the phrase school-to-prison pipeline in discussing the impetus for their intervention. Susan Du and Chicago Bureau, "Obama Administration Calls Out School-to-Prison Pipeline," *Juvenile Justice Information Exchange*, accessed January 16, 2015, <http://jjie.org/obama-administration-calls-out-school-to-prison-pipeline/106003/>; "Obama Administration Calls Out School-to-Prison Pipeline," *The Youth Project*, accessed January 16, 2015, <http://www.chicago-bureau.org/obama-administration-calls-out-school-to-prison-pipeline/>; "Government Offers Guidelines to End School-to-Prison Pipeline | Al Jazeera America," accessed January 16, 2015, <http://america.aljazeera.com/articles/2014/1/8/government-offersdisciplineguidelinestoendschooltoprisonpipeline.html>; "Government Offers New Recommendations To Combat 'School-To-Prison' Pipeline," *Huffington Post*, January 8, 2014, [http://www.huffingtonpost.com/2014/01/08/school-to-prison-pipeline\\_n\\_4560737.html](http://www.huffingtonpost.com/2014/01/08/school-to-prison-pipeline_n_4560737.html); "ACLU Hails Obama Administration's Supportive School Discipline Initiative | American Civil Liberties Union," accessed August 12, 2011, <http://www.aclu.org/racial-justice/aclu-hails-obama-administrations-supportive-school-discipline-initiative>.

<sup>771</sup> Ta-Nehisi Coates, "Hillary Clinton Goes Back to the Dunning School," *The Atlantic*, January 26, 2016, <http://www.theatlantic.com/politics/archive/2016/01/hillary-clinton-reconstruction/427095/>.

throughout the history of public schooling. This lineage should not suggest conspiracy—Ruth Wilson Gilmore uses the phrase “deliberate but not conspiratorial”—but does suggest a myriad of choices made with similar key investments. In many cases, our current systems have been shaped by and responded to by those who have deliberately attempted to maintain notions of racial inferiority embedded in our public school system. At other times, systems have been similarly shaped by those who perceive their work as having an activist and/or social justice orientation, yet their work within an existing system with deeply rooted investments in who is eligible for full inclusion in the citizenry, a mismatch that often leads to tensions.

The physical, geographic separation of students undergirds the school to prison pipeline. The separation not only allows schools to function differently based on the students present in the building, but also allows for a continual lack of awareness about how schools functionally differ. Today, public perception of schools both assumes that the elimination of de jure segregation post-*Brown v. Board of Education* had a meaningful impact on schools and also includes an acute awareness of variations in public school performance, represented as a key factor in property values.<sup>772</sup> This combination of historical amnesia coupled with an implicit understanding of the current regime, consisting of both the Post-Reconstruction modern liberal and neoliberal eras, highlights the ongoing state of emergency of both segregation and the school-to-prison pipeline.

Following W. E. B. DuBois, who argued, “a combination of social problems is far more than a matter of mere addition—the combination itself is a problem,” the interconnectedness of the components of the school-to-prison pipeline contributes to the

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<sup>772</sup> *Brown V. Board of Education*; Kluger, *Simple Justice*. There are substantive amounts of scholarship, legal and otherwise, that focus on defining and understanding the continuation of segregation.

complexity of the dilemma. While the overt disciplinary practices leading to the incarceration rather than education of large numbers of low-income and minority students garner the most attention, practices that construct race and disability within the school system, and discipline accordingly, illuminate their interconnectedness. This project further contributes to understanding how schooling, as a particular bureaucratic function of the state, renders institutionalized racism illegible, even in the face of theoretically anti-racist individual intent. Providing all students with an education that expands rather than circumscribes life chances requires further understanding and altering practices of systemic racism embedded in our public schools. While individual educators can continue to have a profoundly anti-racist impact through their pedagogical practices, considering the power relationships embedded in state institutions helps increase our understanding of how best to alter those structures moving forward.

Cedric's identity as a young black special education student labeled emotionally disturbed debilitated him long before his death. The story of Cedric Napoleon that opened this paper represents the debilitation of students of color, particularly African American students, students with disabilities, and the overlap between those categories. The preparation for Cedric's death began not in the early 21<sup>st</sup> or even late 20<sup>th</sup> century, but a hundred years earlier in the joint discourses and practices defining race and ability inclusion in full-citizenship. The retreat of this overt racism and ableism from public memory has led to amnesiac practices undergirding public schools today, particularly the disproportionate disablization of black students. The death of Cedric Napoleon was not an accident: it was an effect of deeply entrenched white supremacy and racial inequality hidden from contemporary view. The debilitation of black special education students undergirds today's school-to-prison pipeline as students are marked for injury even before they enter the school system.

## Appendix

Reproduced below is the entire text regarding Cedric's case as it appears in the Government Accountability Office's report.<sup>773</sup>

**Case 2:** The victim was a 14-year-old male who died in 2002 from being restrained by his middle school teacher at a public school in Texas. He was taken from his family at the age of nine after the Texas Department of Family and Protective Services (TDFPS)<sup>16</sup> received reports that the boy and his siblings were being neglected and emotionally and physically abused, according to his foster care records. He described having to feed himself by taking food from trash cans and grocery stores. He was placed in his last foster home after being hit in the head with a shovel at the residential treatment center where he resided. Less than a year before he died, he told his therapist that his idea of a safe place was a cave with solid rock walls, a steel door, and lots of food. His most recent psychological assessment noted that the boy suffered from posttraumatic stress disorder, conduct disorder, oppositional defiance disorder, attention deficit hyperactivity disorder, and narcissistic personality disorder. The child also had a fear of not being allowed to eat and often hoarded food as a result of his prior abuse, according to TDFPS. The boy was in a special education class that focused on behavior management. We were unable to obtain the child's individual education plan.

The day the child died, he had been denied his lunch by school staff as a form of punishment, according to an investigation by TDFPS. Reports differ on what prompted this disciplinary action. The classroom teacher told police she gave him a "delayed lunch" because he had stopped working at about 11 a.m. and started asking if he could eat. She said this was a common occurrence. A teacher's aide also told police that he placed the child on "delayed lunch" at about 1 p.m. after the boy tried to steal candy. The child became agitated at about 2:30 p.m. and left the classroom, according to TDFPS. The aide ran after the boy and brought him back to the classroom, but he would not remain seated. The teacher warned him to sit down at least twice before forcibly placing him in his chair. She told police that she used a "basket hold" restraint on him while he remained seated, standing behind him and grabbing his wrists so his arms crossed over his torso. He continued to struggle, so the teacher told police she rolled him onto a mat face down into a "therapeutic floor hold" and lay on top of him. A student said his arms were pinned beneath him. The child was 5 feet 1 inch tall and weighed 129 pounds. The teacher was about 6 feet tall and weighed in excess of 230 pounds. An aide, meanwhile, held the boy's feet. The boy kicked and cursed. He repeatedly said that he could not breathe and that he was going to pass out. Multiple witnesses told investigators that he also said, "I give." After the boy became silent, the teacher continued to restrain him. An

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<sup>773</sup> "Seclusions and Restraints."

assistant principal who had entered the classroom while the boy was still struggling asked the teacher to release him, saying 15 minutes had passed. School district policy required administrator approval for extending restraint past this time period. The teacher and an aide put the child's limp body back in his chair, and the aide wiped drool from his mouth. The assistant principal told police that they thought he had been "playing possum." Once the assistant principal noticed that the child was unresponsive, she said she asked for the school nurse. The nurse arrived and performed CPR while someone phoned 911. The child was taken to the hospital and pronounced dead. A dozen students in the classroom had witnessed the incident.

Medical examiners performed an autopsy and determined that the boy died from mechanical compression of the trunk. His death was ruled a homicide and local police investigated the incident for possible prosecution. During the investigation, the teacher told authorities that the school district trained her on how to restrain students. School policy stated that restraint can be used if the child is an immediate danger to himself or others or if the child is trying to exit the classroom with the intent to leave school premises. One school district restraint trainer told police that the teacher had a very difficult classroom—the worst in the district. She also said she had reviewed the teacher's previous "therapeutic floor holds" and found no problems with the way the teacher executed the procedure.

A grand jury decided not to take action on the boy's death. TDFPS launched their own investigation and found "reason to believe" the teacher physically abused the student on the day he died. TDFPS placed her name on the department's "Central Registry," which lists individuals found to have abused or neglected children. The teacher appealed the listing to the State Office of Administrative Hearings. An administrative law judge found that the child's actions prior to being restrained did not put himself or anyone else in danger. The judge also determined that the boy had already been returned to the classroom uneventfully. The judge also found that the teacher employed the restraint as an inappropriate disciplinary tactic, using excessive, unnecessary force out of proportion to the minimal risk posed by the child's action. The teacher also ignored pleas and warnings that the child could not breathe and continued to hold him after he became still and quiet, the judge noted. Under these circumstances, the judge determined the teacher's action to be reckless and the child's death not an accident. The judge sustained the department's abuse finding and allowed the information to continue to be released to upon request to officials responsible for children. The teacher does not have a criminal record and currently works as a teacher at a public high school in Virginia. Her Virginia teaching license lists endorsements for the instruction of students in grades K-12 who have specific learning disabilities, emotional disturbances and mental retardation. We have referred this matter to the Virginia Department of Education for further investigation.

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